SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1135.

GEORGE C. RAND, JUNIOR, APPELLANT,

vs.

MARTHA A. WALKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Thomas Drummond, judge of the circuit court of the United States for the seventh circuit, on Monday, the eighth day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

MARTHA A. WALKER
vs. } In Chancery.
GEORGE C. RAND *et al.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the sixth day of March, 1882, there were filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a bond for costs and a transcript of record from the superior court of Cook county, Illinois, in said above-entitled cause, which said bond and transcript are, respectively, in the words and figures following, to wit:

2 *Bond for Costs.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. March Term, A. D. 1882.

MARTHA A. WALKER
vs. } In Chancery.
GEORGE C. RAND *et al.*

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the defendants of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this sixth day of March, A. D. 1882.

WILLIAM H. MOORE,
Att'y for All Defendants, except Tucker, Brown & Co.

Endorsed: Filed M'ch 6, A. D. 1882. W. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, *State of Illinois, County of Cook,* } *ss:*

Pleas before the Honorable George Gardner, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house in the city of

Chicago, in said county and State, on the first Monday, being the sixth day of February, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth.

Present: The Honorable George Gardner, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Owin L. Mann, sheriff of Cook county.

JOHN J. HEALY, *Clerk.*

4 Be it remembered that heretofore, to wit, on the fourth day of April, in the year of our Lord one thousand eight hundred and eighty-one, there was filed in the office of the clerk of the superior court of Cook county a certain bill for dower, which is in the words and figures following, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss.*:

In the Superior Court of Cook County. To the April Term, A. D. 1881. In Chancery.

To the honorable judges of said superior court of Cook county, in chancery sitting:

Humbly complaining, showeth unto your honors your oratrix, Martha A. Walker, that on or about the ninth day of May, A. D. 1874, she was lawfully and duly married to Martin O. Walker, since deceased, and continued to be the lawful wife of said Martin O. Walker until his death, as hereinafter set forth.

5 And your oratrix further shows that the said Martin O. Walker, during his lifetime and during the time he was so married to your oratrix, was seized in fee-simple of the following-described real estate situated in said Cook county, to wit: Lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), and twenty-one (21), in block nine (9), in Fort Dearborn Addition to Chicago, and being so seized of said real estate the said Martin O. Walker, on or about the twenty-eighth day of May, A. D. 1874, departed this life intestate, leaving him surviving your oratrix, his widow, and leaving also two sons, Samuel Otis Walker and Edward Stone Walker, as his only heirs-at-law.

And your oratrix shows that thereupon she was and is, as such widow, entitled by law to her dower, or just one-third part of the lands and tenements above described, and that on or about the first day of August, A. D. 1874, she demanded of said heirs of said Martin O. Walker that they set off and apportion to her her dower in the premises above described, with which reasonable request your oratrix well hoped said heirs would have complied, but said heirs and their assigns, contriving and fraudulently intending to

6 injure and defraud your oratrix in the premises, hitherto have, and still do, wholly neglect and refuse to comply with her said reasonable demand, and to set apart and confirm unto your oratrix her dower in said premises, whereby your oratrix has been greatly damaged.

And your orator further shows that one Augustus L. Chetlain was, shortly after the death of said Martin O. Walker, appointed administrator of the estate of said Martin O. Walker; that shortly after the death of the said Martin O. Walker, to wit, in the beginning of A. D. 1875, said Samuel O. Walker and Edward S. Walker, heirs of Martin O. Walker as aforesaid, conveyed said lands and premises to one Charles Fargo, who thereupon took possession thereof, and refused to assign dower therein to your oratrix, although often requested, by reason whereof said Fargo became, and still is, liable to your oratrix for damages for the detention of her dower.

And your oratrix further shows that in the year A. D. 1878 said premises in which your oratrix claims dower, as aforesaid, were sold at administrator's sale by the said Chetlain, as administrator, as aforesaid, but subject to the estate and rights of your oratrix
7 in the premises, and at said sale were bid in by one George C. Rand, and said administrator conveyed said premises to said Rand on or about November second, A. D. 1878.

And your oratrix charges on information and belief, and avers the fact to be, that said Rand, in making said purchase, acted in part as the agent and trustee of one John W. Doane, and took and held the title to said premises to and for the joint use and benefit of himself and of the said Doane; and your oratrix shows that ever since said last-mentioned conveyance said Rand and Doane have entered into and enjoyed the possession of said premises, but that said Doane and Rand, though often requested, have, ever since taking possession of said premises, wholly neglected and refused to set off and apportion to your oratrix her dower therein, by reason whereof the said Doane and Rand became, and still are, liable to your oratrix for damages for the detention of her dower in said premises since said second day of November, A. D. 1878.

And your oratrix further shows that on or about the said second day of November, A. D. 1878, said Fargo conveyed said prem-
8 ises to Carrie Walker, wife of said Samuel O. Walker, and on said last-mentioned day, and as part of the same transaction, said Carrie Walker and Samuel O. Walker conveyed said premises to said Rande, as your oratrix charges in part, in trust for said Doane, and that said Doane and Rand now hold said premises free from all incumbrance, except the estate of dower of your oratrix therein.

And your oratrix insists that the said Samuel O. Walker and Edward S. Walker are liable unto your oratrix in damages for the detention of her dower in said premises from the time she demanded of them that her dower be set off in said premises until they conveyed said premises to said Fargo, to wit, the first day of January, A. D. 1876; and that said Fargo is liable to your oratrix in damages for the detention of her said dower from said last-mentioned day till the second day of November, A. D. 1878, and that said Doane and Rand are liable to your oratrix for damages for the like detention of her said dower rights in said premises from said second day of November, A. D. 1878.

And your oratrix further shows that said premises were subject to

the lien of a certain deed of trust made to Charles E. Brown
9 for the trust therein specified in favor of Chauncey Tucker, since deceased, Henry G. Tucker, and Thomas Brown, which said deed of trust was executed and delivered by the said Martin O. Walker, in his lifetime, to secure, under the conditions therein specified, a certain judgment existing against him, the said Martin O. Walker, in favor of *cestuis que trust*, in case such judgment should be affirmed by the supreme court of Illinois, to which court appeal therefrom was pending; and also to secure any other judgment that might be thereafter rendered against him on the covenants of the lease, whereon the then existing judgment had been rendered, and for more particularity as to said deed of trust and the covenants therein contained and the judgment therein described reference is hereby made to a copy of said deed of trust attached to this bill.

Your oratrix further shows that since the execution and delivery of said deed of trust the judgment therein described has been reversed by said supreme court of the State of Illinois, and that said judgment and said deed of trust have ceased to be a lien on said premises for the purposes for which such lien was created; that the said supreme court has construed said lease on which said judg-
10 ment was founded, and the legal liability thereunder of the lessees to the lessors therein, and has decided that and adjudicated that under said lease no liability existed on the part of the said Martin O. Walker to the persons who were the lessors therein and the creditors in said judgment, and that no action can lie or judgment be recovered to enforce any liability on the part of the said Martin O. Walker on the covenants in said lease contained, and that said opinion and decision of said supreme court is shown in the case of Walker *et al. vs.* Tucker *et al.*, reported in the seventieth volume of Illinois Reports, at page 527, to which opinion for greater certainty of the matters herein contained your oratrix here makes reference.

And your oratrix shows and insists that said deed of trust has wholly ceased to be any lien or charge upon the said land and premises as against your oratrix; that the said deed of trust was signed by your oratrix joining with her said husband, Martin O. Walker, and that she thereby and to the extent of her interest in said lands and premises, became a surety for her said husband and pledged and mortgaged her estate in said premises as a surety, and not otherwise for him, to the extent and for the purposes expressed in said deed of trust, and for no other,
11 and that her obligation as such surety under said deed of trust is extinguished by the reversal of said judgment and by the judicial construction aforesaid put upon said lease and the covenants therein contained, and she insists that said deed of trust has become null and void as between the grantors therein and the grantee and *cestuis que trust* therein, and particularly is the said deed of trust null and void and the obligation of your oratrix therein extinguished, and the lien thereof discharged, as between your oratrix and the estate of her husband and his heirs, and all persons claiming by, through, or under them, or any of them; and she also in-

sists that any enforcement of said deed of trust against the estate of said Martin O. Walker, or against the premises therein described, would be without effect upon her estate of dower in said land, and that she is entitled to indemnity from the estate of her said husband in case any part of her estate in said premises should be taken to satisfy any liability of her said husband or of his estate to the persons, or any of them, who were or are *cestuis que trust* under
12 deed of trust, and that said estate is holden to her for such indemnity, and that said heirs and all persons claiming by, through, or under them are accordingly estopped to set up said deed of trust as against the dowerright of your oratrix in the premises.

And your oratrix shows that said deed of trust has become null and void, but the same remains a cloud upon the estate of your oratrix in the premises, and that she is therefore entitled to have the same declared null and void, and a release of said trust deed executed to her, in so far as the same appears to affect the rights of your oratrix in the premises.

And your oratrix further shows unto your honors that there is now in the hands of one John N. Jewett, as trustee, a sum of more than twenty-five thousand dollars, as a fund to be first applied upon any liability which may accrue under said deed of trust.

And your oratrix further shows, on information and belief, that there now remains in the hands of said Chetlain and Samuel O. Walker a large sum of money, derived from the estate of said Martin O.
13 Walker after the purchase and settlement of all claims against said estate, and that said last-mentioned moneys so arising from said estate is a fund that ought to be applied in exoneration of the dower right of your oratrix in the premises in this bill described; and she further insists that if all liability under said deed of trust is now extinguished, that then she is entitled under the statute of one-third of said fund so remaining in the hands of said Chetlain and Samuel O. Walker.

And your oratrix further shows unto your honors that at the administrator's sale above mentioned of the premises above described the said Rand bid for and purchased said land subject to whatever paramount charge or lien might exist thereon, including any lien thereon under said deed of trust; that he bid for said premises only the sum of forty thousand dollars, and purchased them for that price, while the actual value of said property was very much greater, to wit, of the value of from one hundred and fifty to two thousand dollars, and that he purchased said land subject, as aforesaid, to said deed of trust, so that your oratrix insists any liability under said deed of trust was assumed by said purchaser as a part of the consideration of said purchase, and that said liability under said
14 deed of trust, if any now exists, has been accordingly satisfied out of the estate of the said late husband of your oratrix, and she is entitled to her dower therein free and discharged of all incumbrance under or by said deed of trust, and she insists that the said purchaser, having received from the estate of the said Martin O. Walker a fund for the satisfaction of said liability, and a consideration for the acceptance thereof, is barred and estopped from setting

up said deed of trust as against the claim of your oratrix for dower, but that said purchaser is, on the contrary, held and bounden unto your oratrix to indemnify her in her dower rights in said premises, as against said deed of trust.

In tender consideration whereof, and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown,
15 and Henry E. Tucker, all of whom are hereby made defendants to this bill, may, to the utmost of their respective knowledge, remembrance, information and belief, true, full, direct, and perfect answer make to all and singular the matters aforesaid, but not under oath, their answer under oath being hereby expressly waived, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and that an account may be taken under the direction of this honorable court of the rents and profits of said premises received by any of said defendants during their possession, control or ownership thereof as aforesaid, or which, but for his or their wilful default or neglect might have been so received, and that her due proportion of said rents or profits may be decreed to be paid to your oratrix by said defendants so receiving or chargeable with said rents and profits as damages for the detention of her dower in said premises, and that in default of their paying the same that execution issue against them therefor; and that your oratrix's dower in said premises may be set out to your oratrix by metes and bounds, and your oratrix be put in possession thereof; and that said moneys so remaining in the hands of said Chetlain and
16 Samuel O. Walker may be decreed to be paid in exoneration of any lien or claim on said premises, if any such exist, paramount to the right of dower of your oratrix; and that it may be decreed by this honorable court that said deed of trust made by said Walker to said Charles G. Brown for the securing of said judgment has ceased to be a lien on said premises as against the rights of your oratrix therein, and that your oratrix is entitled to a release therefrom from the said Charles E. Brown as to her dower interest therein, and that it be decreed that said Charles E. Brown execute such release, and that your oratrix may have such other and farther relief in the premises as the nature of this case may require and to your honors may seem meet:

May it please your honors to grant unto your oratrix the people's most gracious writ of summons therein and thereby commanding the said George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker, and each of them, at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, and
17 then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform,

and abide such further order, direction, and decree as to this honorable court shall seem meet.

And your oratrix will ever pray, etc.

MARTHA A. WALKER,
By ISHAM & LINCOLN,
Her Solicitors.

EDWARD S. ISHAM,
Of Counsel.

18 Martin O. Walker to Charles E. Brown.

This indenture, made this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-four, between Martin O. Walker and Martha A. Walker, his wife, of the city of Chicago and State of Illinois, party of the first part, and Charles E. Brown, of the city of Buffalo, in the State of New York, party of the second part, as trustee, as hereinafter specified, witnesseth:

That whereas at the May term, A. D. 1873, of the circuit court of Cook county, in the State of Illinois, in a suit therein pending, wherein Chauncey Tucker, Henry G. Tucker, and Thomas Brown were plaintiffs, and Martin O. Walker, Robert McClelland, Amos G. Throop, and James Mullins were defendants, a judgment was recovered by the said plaintiffs against the said defendants for one hundred and nineteen thousand six hundred and thirty-seven dollars ($119,637) and the costs of suit, from which an appeal was taken and prosecuted to the supreme court of the State of Illinois, which appeal is now pending and undisposed of in said supreme court, but which judgment is a lien upon the real estate of said Walker in the
19 county of Cook aforesaid; and whereas said Thomas Brown claims to be the sole owner of said judgment and of all the incidents thereto, and to be alone entitled to all the benefits of said judgment, and to have full right and power to release and discharge the lien of said judgment, and to hold by assignment all the right and interest in the said judgment and lien of each and every of the other plaintiffs aforesaid; and whereas, in consideration of the security furnished by this indenture, and of the trusts hereby and hereafter created, the said Thomas Brown has agreed, and does agree, to release and discharge the real estate of said Martin O. Walker from the lien of said judgment, now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of one dollar ($1) to him paid by the said party of the second part, the receipt whereof is hereby confessed, has and does hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all the following-described lands and premises situate in the city of Chicago, in the county of Cook and State of Illinois, to wit: Lots sixteen (16),
20 seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), in block nine (9), in Fort Dearborn Addition to Chicago; also the east half (½) of the south half (½) of lot six (6), in block thirty-six (36), in the original town of Chicago, to have and to

hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns, forever. In trust, nevertheless, to secure said Thomas Brown, or to whomsoever may be the owner of said judgment and entitled in equity to the benefit of the aforesaid lien thereof, the payment of any execution that may be issued on said judgment, with the costs, as aforesaid, in case the same shall be affirmed in the supreme court, to which the same is now appealed, and in case the same shall be reversed or not affirmed therefor, the payment of any judgment that may be thereafter ultimately rendered in said suit, or ultimately rendered in any other suit that may be thereafter brought and founded upon the covenants contained in the indenture of demise set forth in the pleadings in said suit, and upon which covenants
21 the said suit or action is founded, and it is hereby covenanted and agreed that the said judgment, if affirmed as aforesaid, or any other judgment that may as above mentioned be recovered upon the covenants aforesaid, shall be and remain a first and valid lien upon the above-granted lands and premises which are hereby conveyed in trust upon that use, and upon the further trust that in case neither the said Martin O. Walker, his executors and administrators, nor any other person legally liable upon such judgment as may be ultimately rendered as aforesaid, shall duly pay within the time required by law the sum or sums of money that may be legally called for by any execution that may be duly issued upon such judgment as aforesaid, according to the legal tenor and effect of such judgment and execution thereon the application of the person or persons who may be entitled to the said judgment and the indebtedness represented thereby, and to the benefit of such execution as aforesaid issued thereon to sell and dispose of the said premises, or such part thereof as may
22 be necessary for the purposes aforesaid, and all the right, title, benefit, and equity of redemption of the said party of the first part, and his assigns therein, at public auction, at such place in said city of Chicago, in Cook county, State of Illinois, as may be specified in the notice of such sale, to be given as hereinafter provided, or on said premises, or on any part thereof, as may be specified in said notice of sale, for the highest and best price the same will bring in cash, ten days' notice having been previously given of the time and place of such sale by advertisement in any newspaper at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale, and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including all moneys advanced for taxes and other lien or assessments, with interest thereon, then to pay the amount of money legally called for and payable upon such execution as aforesaid up to the time of such sale, rendering the overplus, if any, unto the said Martin O. Walker, his executors,
23 administrators, or assigns, on reasonable request, and it shall

not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part and his assigns and other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or, upon default, it shall and may be lawful for the said party of the second part, in his discretion, in his own name, or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of the said premises, for the purposes herein specified, under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, in addition to and besides the costs of advertising, sale, conveyance, and moneys advanced, with interest as above provided, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid.

And the said party of the second part, with or without re-
24 advertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time, at his discretion, and also to sell the said premises *en masse* or in separate parcels, as he may prefer or think best.

And the said party of the first part covenants and agrees to and with the said party of the second part, his successors in trust hereinbefore named, and their assigns, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid.

A reconveyance of said premises shall be made to said party of the first part, or its assigns, at his expense, on full payment of all the indebtedness aforesaid and performance of the covenants and agreements made herein by the party of the first part.

And said party of the first part, for himself and his assigns, does further covenant and agree to and with said party of the second part, his heirs and assigns, that in case of a sale and convey-
25 ance as aforesaid of said premises, and deed or deeds of conveyance made in pursuance of such deed, shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said Martin O. Walker, party of the first part herein, and furthermore John Gray, of the town of Jefferson, Cook county, Illinois, and George Taylor, of the city of Chicago aforesaid, who are the sureties of and for the said party of the first part upon his appeal bond in the appeal above mentioned to the supreme court from the judgment aforesaid of the said circuit court, and who execute this instrument in token of their assent to the provisions thereof, and to the release by said Thomas Brown and his discharge of the lien of said judgment, and of their acceptance in lieu thereof of the provisions of this instrument, have hereunto set

their hands and affixed their seals the day and year first above written.

M. O. WALKER. [SEAL.]
MARTHA A. WALKER.
26 JOHN GRAY. [SEAL.]
GEORGE TAYLOR. [SEAL.]

The said Gray and Taylor hereby consent and agree that the release by said Brown of certain lands of said defendant Walker from the lien of the said judgment and the acceptance of this security shall not operate to discharge them, said Gray and Taylor, from liability as sureties on said appeal bond, or in any way affect or lessen their liability thereon, according to the tenor and effect of said bond.

JOHN GRAY. [SEAL.]
GEORGE TAYLOR. [SEAL.]

The words "and Martha A. Walker, his wife," were interlined in the second line from the top of the first page of the foregoing deed of trust on the date hereof, before the signature and acknowledgment of said deed of trust by said Martha A. Walker, and by the directions of said Martin O. Walker, and in our presence.

Chicago, May 18, 1874.

F. W. BUCKINGHAM.
WILLIAM ENGLAND.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry P. Isham, a notary public in and for the county and State aforesaid, do hereby certify that Martin O. Walker, John
27 Gray, and George Taylor, who are personally known to me as the real persons whose names are subscribed to the foregoing deed of trust, and to the memorandum of agreement thereunder written, as having executed the same, appeared before me this day in person, and severally acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal [this] sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

[NOTARIAL SEAL.] HENRY P. ISHAM,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry P. Isham, a notary public in and for the county and State aforesaid, do hereby certify that Martin O. Walker and Martha A. Walker, his wife, who are personally known to me to be the real persons whose names are subscribed to the foregoing deed of trust as having executed the same, appeared before me this day in person, and severally acknowledged that they signed, sealed, and delivered the said instrument in writing as their free and vol-
28 untary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighteenth day

of May, in the year of our Lord one thousand eight hundred and seventy-four.

[NOTARIAL SEAL.] HENRY P. ISHAM,
Notary Public.

[Endorsed:] No. 169,589. Filed for record May 22, A. D. 1874 and recorded May 27th, 1874. James Stewart, recorder.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 22d day of May, A. D. 1874, as document No. 169,589, and recorded in book 413 of records, at page 13.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this 26th day of March, A. D. 1881.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

29 And on the same day and year last aforesaid, to wit, April 4th, A. D. 1881, there issued out of the office of the clerk of said superior court of Cook county a certain summons, which, together with the sheriff's return thereon endorsed, is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The people of the State of Illinois to the sheriff of said county Greeting:

We command you that you summons George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker, if they shall be found in your county, personally to be and appear before the superior court of Cook county on the first day of the term thereof, to be held at the court-house in Chicago, in said Cook county, on the first Monday of May next,
30 to answer unto Martha A. Walker, in her certain bill of complaint filed in said court, on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healey, clerk of our said court, and the seal thereof, at Chicago, this 4th day of April, A. D. 1881.

[SEAL.] JOHN J. HEALY, *Clerk.*

Endorsement.

Served the within writ on the within-named Charles Fargo by delivering a copy of the same to him this 11th day of April, 1881.

O. L. MANN, *Sheriff,*
By T. E. STACEY, *Deputy.*

Served this writ on the within-named Samuel Otis Walker by leaving a copy thereof with Carrie Walker, a person of his family,

upwards of the age of ten years, in the usual place of abode of the said defendant, informing her of the contents thereof, the 19th day of April, 1881.

OWIN L. MANN, *Sheriff*,
By EMIL DIETZSCH, *Deputy*.

31 Served this writ on the within-named John W. Doane by delivering a copy of the same to him this 11th day of April, 1881.

O. L. MANN, *Sheriff*,
By J. H. BURKE, *Deputy*.

Served this writ on the within-named Augustus L. Chetlain by delivering and leaving a true copy thereof with Margaret Sullivan, a person of his family, upwards of the age of ten years, at the usual place of abode of said defendant, informing her of the contents thereof, the 14th day of April, 1881.

OWIN L. MANN, *Sheriff*,
By EMIL DIETZSCH, *Deputy*.

Paid $4.

And, afterwards, to wit, on the 8th day of April, in the year aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said court a certain affidavit of non-residence, which is in the words and figures following, to wit:

In the Superior Court of Cook County. April Term, A. D. 1881. In Chancery.

MARTHA A. WALKER
vs.
32 GEORGE C. RAND, JOHN W. DOANE, SAMUEL Otis Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker. } Gen. No., 78517.

STATE OF ILLINOIS, }
County of Cook, } *ss.*:

Martha A. Walker, being sworn, on oath says that she is the complainant in the above cause; that said defendants to said cause, George C. Rand, Edward Stone Walker, Charles E. Brown, Thomas Brown, and Henry G. Tucker, each and all reside out of said State of Illinois; that she has caused diligent inquiry to be made as to the residences of said non-resident defendants, and is informed and believes, and therefore states the fact to be, that said George C. Rand resides in the city of New York, in the State of New York; that said Edward Stone Walker resides in Boulder City, in the State of Colorado; and that said Charles E. Brown and Henry G. Tucker reside in the city of Buffalo, in the State of New York.

And further affiant saith no.

MARTHA A. WALKER.

Subscribed and sworn to before me by the said Martha A.
33 Walker this seventh day of April, A. D. 1881.

[SEAL.] WILLIAM L. GLASS,
Notary Public.

And afterwards, to wit, on the 14th day of April, in the year aforesaid, to wit, A. D. 1881, there was issued and filed by the clerk of said superior court of Cook county his certificate of mailing notice, which is in the words and figures following, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Superior Court of Cook County. In Chancery.

MARTHA A. WALKER }
vs. } 78517.
GEORGE C. RAND *et al.* }

I, John J. Healy, clerk of the superior court of Cook county, in and for said county, in the State of Illinois, do hereby certify that on the 14th day of April, A. D. 1881, I sent by mail a notice, a copy of which is hereto attached, marked Exhibit "A," to the following defendants, and addressed as follows:

34 One copy to George C. Rand, New York, New York.

One copy to Charles E. Brown, Buffalo, Erie Co., New York.

One copy to Henry G. Tucker, Buffalo, Erie Co., New York.

One copy to Thomas Brown, Buffalo, Erie Co., New York.

One copy to Edward Stone Walker, Boulder, Boulder Co., Colorado.

JOHN J. HEALY, *Clerk.*

EXHIBIT "A."

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Superior Court of Cook County. To the May Term, A. D. 1881. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker. } Gen. No., 78517.

35 Affidavit of the non-residence of George C. Rand, Edward Stone Walker, Charles E. Brown, Thomas Brown, and Henry G. Tucker, defendants above named, having been filed in the office of the clerk of the said superior court of Cook county, notice is hereby given to the said defendants, George C. Rand, Edward Stone Walker, Charles E. Brown, Thomas Brown, and Henry G. Tucker, that the above-named complainant, Martha A. Walker, filed her

bill of complaint in said court, on the chancery side thereof, and that a summons has issued out of said court thereon against defendants, returnable at the court-house in said county of Cook on the first Monday of May, A. D. 1881, being the first day of the May term, A. D. 1881, of said superior court of Cook county, as is by law required, and which suit is still pending.

Dated at Chicago, Illinois, April 8th, 1881.

JOHN J. HEALY, *Clerk.*
ISHAM & LINCOLN, *Attorneys.*

36 And afterwards, to wit, on the 4th day of May, in the year aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said court a certain appearance, which is in the words and figures following, to wit:

STATE OF ILLINOIS, }
Cook County, } *ss:*

Superior Court of Cook County. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, THOMAS BROWN, and HENRY G. TUCKER.

We hereby enter the appearance of said defendants, John W. Doane, Samuel Otis Walker, Augustin L. Chetlain, and Charles Fargo.

SMALL AND MOORE,
Sol'rs for said Def'ts

37 And afterwards, to wit, on the 6th day of June, in the year aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said court a certain other appearance, which is in the words and figures following, to wit:

Bill for Dower.

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND & *al.*

The said Charles E. Brown, Thomas Brown, and Henry G. Tucker enter their appearance herein by W. C. Goady, their solicitor.

And afterwards, to wit, on the 20th day of the same month and year aforesaid, to wit, June, A. D. 1881, there was filed in the office of the clerk of said superior court of Cook county a certain answer, which is in the words and figures following, to wit:

38 STATE OF ILLINOIS, } ss:
County of Cook, }

Superior Court, Cook County. In Chancery.

MARTHA A. WALKER

v.

GEORGE G. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, AND HENRY G. TUCKER.

The separate answer of Thomas Brown, Henry G. Tucker, and Charles E. Brown to the bill of complaint of Martha A. Walker.

These respondents, saving and reserving to themselves all advantage from any imperfections in the bill of complaint contained, for answer thereunto, or to so much as they are advised it is material to be answered unto, say and admit that the complainant, Martha A. Walker, was married to Martin O. Walker and continued his lawful wife until his death, as stated in the bill; and that the said Martin O. Walker, during his lifetime and during the time he
39 was so married to the complainant, was seized in fee-simple of the lots described in the bill, and that he died on the 28th day of May, 1874, intestate, leaving the complainant surviving his widow, and also leaving two sons, Samuel Otis Walker and Edward Stone Walker, his heirs-at-law.

These respondents, further answering, admit and aver that on the 15th day of April, 1874, the said Martin O. Walker and the said Martha A. Walker, is wife, the complainant herein, executed, acknowledged, and delivered to the respondent, Charles E. Brown, a deed of trust, and therein conveyed the premises described in the bill of complaint, with other property in fee-simple, a true copy of which deed is attached to the bill.

These respondents admit that since the execution and delivery of said deed of trust the judgment therein described has been reversed by the supreme court of the State, but they deny that the said deed of trust has ceased to be a lien on said premises, and aver that a suit has been commenced on the same causes of action by the
40 said Thomas Brown and Henry G. Tucker, surviving partners of Tucker, Brown & Co., in the circuit court of the United States for the northern district of Illinois, and that said plaintiffs have good causes of action, and are entitled to recover a judgment thereon, which, when recovered, will come within the terms and conditions of said deed of trust, and the same will stand as security for the payment thereof.

These respondents deny that there has been any final decision or judgment as to the legal liability of the lessees, defendants in said suit, by the supreme court of Illinois, or by any other court, and they deny that said deed of trust has ceased to be a lien upon said lots.

And these respondents, further answering, deny that the said deed of trust was signed by the complainant as a surety for her said

husband, and deny that her obligation, if any she assumed as his surety, has been extinguished or released.

And these respondents, as to all other matters and things
41 in said bill contained necessary to be answered unto by these respondents, or either of them, *they* deny the same.

And now, having fully answered, these respondents pray that they may be dismissed, with their reasonable costs in this behalf sustained.

THOMAS BROWN.
HENRY G. TUCKER.
CHARLES E. BROWN.

W. C. GOUDY, *Solicitor.*

And afterwards, to wit, on the 20th day of August, in the year aforesaid, to wit, A. D. 1881, there were filed in the office of the clerk of said superior court of Cook county five certain demurrers, which are in the words and figures following, to wit:

42 *The Joint and Several Demurrer of George C. Rand and John W. Doane, Defendants, to the Bill of Complaint of Martha A. Walker, the Above-named Complainant.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County, August Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, *et al.*

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainant has not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against these defendants or any of them.

Wherefore, and for divers other good causes of demurrer
43 appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

SMALL & MOORE,
Solicitor- for Defendants.

E. A. SMALL, *of Counsel.*

The Demurrer of Samuel O. Walker, Defendant, to the Bill of Complaint of Martha A. Walker, the Above-named Complainant

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, August Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs
GEORGE C. RAND, SAMUEL O. WALKER *et al.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's
44 bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special causes of demurrer this defendent shows:

First. That it appears from said bill that the supposed cause of action against this defendent for damages arising from the alleged detention of dower did not accrue at any time within five years next before the filing of said bill of complaint.

Second. That it appears from said bill of complaint that there now remains in the hands of one Chetlain and this defendant a large sum of money derived from the estate of Martin O. Walker, deceased, after the purchase and settlement of all claims against said estate; but it does not appear from said bill how such purchase and settlement of claims was made, or that the plaintiff has any interest therein, or in the proceeds or result thereof; and said
45 charge is therefore so uncertain that it is impossible to make answer thereunto.

Wherefore, and for divers other good causes of demurrer, appearing to the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

E. A. SMALL,
Of Counsel.

The Demurrer of Edward S. Walker, Defendant, to the Bill of Complaint of Martha A. Walker, the Above-named Complainant.

STATE OF ILLINOIS, } ss:
Cook County. }

In the Superior Court of Cook County. August Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, EDWARD S. WALKER, *et al.*

46 This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special cause of demurrer this defendant shows:

That it appears from said bill that the supposed cause of action against this deponent did not accrue at any time within five years next before the filing of said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

E. A. SMALL,
Of Counsel.

47 *The Demurrer of Augustus L. Chetlain, Defendant, to the Bill of Complaint of Martha A. Walker, the Above-named Complainant.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County. August Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, and AUGUSTUS L. CHETLAIN, *et al.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath

not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special causes of demurrer this defendant saith:

That it appears from said bill of complaint that the defend-
48 ant was the administrator of the estate of Martin O. Walker, deceased, but it is not stated that he still continues to be such administrator, or that he now holds or controls any moneys of said estate as such administrator; and said bill is uncertain in the averment as to whether or not this defendant holds such moneys as such administrator or as an individual.

And, further, because said bill is uncertain in averment so far as relates to this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

E. A. SMALL,
Of Counsel.

49 *The Demurrer of Charles Fargo, Defendant* in *the Bill of Complaint of Martha A. Walker, the Above-named Complainant.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County. August Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, CHARLES FARGO, *et al.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill and for cause of demurrer showeth that the said complainant hath not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special causes of demurrer this defendant shows:

1st. That it appears from said bill that all of said cause of
50 action against this defendant did not accrue within five years next before the filing of said bill of complaint.

2d. That it does not appear by said bill of complaint that all of the damages for the alleged detention of dower by this defendant have not been paid and adjusted with the complainant.

Wherefore, and for divers other good causes of demurrer appearing

in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

E. A. SMALL, *of Counsel.*

51 And afterwards, to wit, on the fifth day of December, in the year aforesaid, to wit, A. D. 1881, said day being one of the days of the December term of said superior court of Cook county, the following among other proceedings were had in said court and entered of record, to wit:

Bill.

MARTHA A. WALKER } 78715.
vs.
GEORGE C. RAND *et al.* }

This cause coming on this day to be heard upon the demurrers of the defendants filed herein to the bill of complaint, after argument of counsel and due deliberation by the court, leave is given the defendants, George C. Rand and John W. Doane, to withdraw their demurrers, and the demurrer of the defendant, Charles Fargo, is overruled, and the demurrers of the defendants, Samuel Otis Walker and Edward Stone Walker, are sustained, and leave is hereby given the complainant to amend her bill of
52 complaint within ten days from this date.

And afterwards, to wit, on the 14th day of December, in the year aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said superior court of Cook county certain amendments to bill, which are in the words and figures following, to wit:

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER } Gen. No., 78517.
v.
GEORGE C. RAND *et al.* }

And now comes the plaintiff, by her solicitors, and by leave of court for that purpose first had and obtained, amends her bill of complaint in manner and form as follows, to wit:

On the fourth page of said bill, before the paragraph com-
53 mencing on last line of said page, insert as follows:

And your oratrix further shows that shortly after the death of Martin O. Walker, to wit, in the month of June, A. D. 1874, she made a demand upon Samuel O. Walker and Edward S. Walker, the heirs of said Martin O. Walker, that they set out and assign her dower in the premises first above mentioned, which said heirs then and there refused to do, and that thereupon on, to wit, the eighteenth

day of August, A. D. 1874, she filed a bill in this honorable court for dower against the said S. O. Walker and E. S. Walker *et al*, praying that dower be set out to her in the premises first above described, and in many other *other* pieces of real estate of which Martin O. Walker died seized, and claiming damages from said heirs for the unlawful detention of said dower; that said heirs and others appeared in said cause and made answer to said bill; that said litigation was closely contested; that on the 25th day of May, A. D., 1875, she filed in said cause, by leave of said court, her supplemental bill making said Augustus L. Chetlain defendant thereto, and that said heirs and Chetlain, among others, appeared in said cause
54 and answered said supplemental bill; that on, to wit, the first day of March, A. D. 1876, she filed in said cause her second supplemental bill, making defendant thereto Charles Fargo, Chetlain, and said heirs, reciting therein that the said Fargo had received a deed of the premises first above described, and many other lots of real estate of which said Martha O. Walker died *deceased*, from said heirs, claiming that said *said* Charles Fargo became liable for damages for the detention of her dower, and praying that, as against the said Fargo, her dower be set out in the premises first in this bill described and in many others, and that damages be awarded her, as against said heirs and said Fargo, for the unlawful detention of her dower in all the premises of which the said Walker died seized and which were in said bill of complaint mentioned; that the said heirs and the said Fargo appeared and answered said supplemental bill; that said case was referred to a master in chancery for proof in support of the pleadings therein; that proof was taken before said master, and that said master on, to wit, the twen-
55 tieth day of April, A. D. 1876, made a report to the court, with depositions taken before him; that said case was tried in this court at the December term, A. D. 1876, thereof; that subsequently, to wit, in the month of February, A. D. 1878, said cause was again called for trial, and a — trial therein; that on the 10th day of April, A. D. 1878, a final decree was entered in said cause upon the prayer of said bill, finding, among other things, dower for your oratrix in the premises in this bill first above described; that thereupon said defendant heirs and said defendant, Charles Fargo, took an appeal from said decree to the appellate court for the first district of Illinois, and that thereupon such proceedings and arguments were had in said appellate court that judgment was entered in said appellate court confirming said decree so entered as aforesaid on the tenth day of April, A. D. 1878, so far as the same related to the property in said decree mentioned, except as to the property first hereinbefore mentioned, and reversing said decree as to each and every provision therein regarding the property first hereinbefore mentioned;
56 that thereupon on, to wit, the second day of January, A. D. 1878, a mandate from said appellate court was filed in said cause in this court, and said cause was thereupon redocketed; that your oratrix, finding that the record in said cause formerly pending in this court had become very voluminous and was very much embar-assed by the matter in said record contained relating to property other than

that in this bill first above-mentioned, and concerning which there was no further any controversy, applied to this honorable court in said cause to have said cause dismissed as to said property first mentioned, and on, to wit, the ninth day of January, A. D. 1881, said suit, so formerly pending in this court, was as to said property first above in this bill mentioned, dismissed without prejudice to the rights, claims, and equities of your oratrix therein.

And said complainant also amends her bill of complaint by inserting after the paragraph ending on the eighth page of said bill of complaint with the words "Samuel O. Walker," as follows: Your oratrix further shows, on information and belief, that while
57 the said estate of the said Martin O. Walker, deceased, was in the probate court of Cook county a very large amount of claims *was* proven up against the said estate, to wit, claims to the amount of two hundred thousand dollars; that the estate of said Martin O. Walker was insolvent; that said Chetlain, as administrator, and said Samuel O. Walker contriving and conspiring how to defraud the creditors of said estate, publicly gave out that only a very small percentage would ever be paid of the face value of said claims, as proved up in said probate court; that the said Chetlain and the said S. O. Walker negotiated with divers parties as to the amount which could be realized from the real and personal estate of said Martin O. Walker, if the real estate of said Martin O. Walker was sold at administrator's sale to pay the debts of said estate; that thereupon said Chetlain and said S. O. Walker, using the credit of said estate, and pledging the money to come from the sale of the real and personal estate of said Martin O. Walker, raised a large amount of money, to wit, the sum of about
58 twenty thousand dollars, and with said last-mentioned sum of twenty thousand dollars applied to the various creditors of the estate of said Martin O. Walker, deceased, and represented to them that they would never be able to get more than about ten per cent. of the face of their claims; that on the strength of such representations made to said creditors, the said Chetlain and said S. O. Walker bought from the creditors of said estate all, or nearly all, the claims proved up against the said estate in said probate court at a small percentage of the face value, to wit, at about a percentage of ten per cent. thereof; that said claims were so purchased solely with the funds raised on the credit of the said estate of said Martin O. Walker, and in anticipation of the sale of the real and personal estate of the said Martin O. Walker; that said claims when so bought up by the said Chetlain and the said S. O. Walker were not cancelled of record, nor in any otherwise marked satisfied, but were taken in the name, as your oratrix is informed and believes, of one Caroline Kennicolt, for the use of Samuel O. Walker, and are
59 still so held; that thereupon the said Chetlain, as administrator, in collusion with the said S. O. Walker, sold at public auction the estate of said Martin O. Walker, deceased, to satisfy the debts of said estate, and thereupon declared and paid upon all the claims of said estate an amount equal to more than eighteen per cent. of the face value of all of said claims, or to about forty thou-

said dollars; that all, or nearly all, of said last-mentioned amount was paid to the said S. O. Walker, or to said Caroline Kennicolt, as his trustee, although in law said claims were really satisfied; and your oratrix insists that thereupon a large sum of money, to wit, the sum of about twenty thousand dollars, was by the said Chetlain and the said S. O. Walker, fraudulently applied to the payment of claims which were in law cancelled and paid, and your oratrix insists that as between your oratrix and the estate of the said Martin O. Walker she was only a surety upon the above-mentioned trust deed in favor of Tucker, Brown and Company, and was entitled to have all of the estate of said Martin O. Walker, both real
60 and personal, after the payment of the debts of the said estate applied in exoneration of her dower right in the premises first above described as against the said trust deed, in favor of Tucker, Brown, and Company, and she therefore insists that there is now in the hands of the said Chetlain and the said Samuel O. Walker a large sum of money, to wit, the sum of twenty thousand dollars, derived from the estate of Martin O. Walker, and being in excess of the sum used in buying up all the claims against said estate of Martin O. Walker, which ought to be reserved and set apart by this court as a fund with which to pay off any liability that may at any time accrue on said trust deed made in favor of Tucker, Brown, and Company, and she insists that said Chetlain and said Samuel O. Walker ought to be *applied* to pay into the court the said sum of money so by them misappropriated.

MARTHA A. WALKER,
By ISHAM, LINCOLN,
BURRY & RYERSON,
Her Solicitors.

61 And afterwards, to wit, on the seventeenth day of the same month and year aforesaid, to wit, December, A. D. 1881, said day being one of the days of the December term of said superior court of Cook county, the following among other proceedings were had in said court and entered of record, to wit:

Bill.

MARTHA A. WALKER, *vs.* GEORGE C. RAND *et al.* } No. 78715.

On motion of complainant, it is ordered that the defendants, George C. Rand, John W. Doane, and Charles Fargo, be, and are hereby, required, to plead, answer, or demur to the bill of complaint herein, as amended, within twenty days from this date.

62 And afterwards, to wit, on the 21st day of December, in the year aforesaid, to wit, 1881, there was filed in the office of the clerk of the superior court of Cook county three certain demurrers, which are in the words and figures following, to wit:

The Demurrer of Augustus L. Chetlain, Defendant, to the Amended Bill of Complaint of Martha A. Walker, the Above-named Complainant.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County. December Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, AUGUSTUS L. CHETLAIN, *et al.*

This defendant, by protestation, and not confessing or acknowledging all or any of the matters and things in said complainant's amended bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth de-
63 mur to the said amended bill, and for cause of demurrer showeth that the said complainant hath not in and by her said amended bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special cause of demurrer this defendant saith:

That it appears from said amended bill of complaint that this defendant was the administrator of the estate of Martin O. Walker, deceased, but it is not stated that he still continues to be such administrator, or that he now holds or controls any moneys of said estate as such administrator; and said amended bill is uncertain in the averment as to whether or not this defendant holds such moneys as such administrator or as an individual; and, further, because said amended bill is uncertain in averments so far as relates to this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to
64 make any further or other answer to the said amended bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

The Demurrer of Edward S. Walker, Defendant, to the Amended Bill of Complaint of Martha A. Walker; the Above-named Complainant.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County. December Term, A. D. 1881.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, EDWARD S. WALKER, *et al.*

This defendant, by protestation, not confessing or acknowledging

all or any of the matters and thing in said complainant's amended bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the
65 said amended bill, and for cause of demurrer showeth that the said complainant hath not in and by her said amended bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special cause of demurrer this defendant shows that it appears from said amended bill that the supposed cause of action against this defendant did not accrue at any time within five years next before the filing of said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

66 *The Demurrer of Samuel O. Walker, Defendant, to the Amended Bill of Complaint of Martha A. Walker, the Above-named Complainant.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County. December Term, A. D. 1881
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, SAMUEL O. WALKER, *et al.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's amended bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said amended bill, and for cause of demurrer showeth that the said complainant hath not in and by her said amended bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special causes of demurrer this defendant shows:
67 First. That it appears from said amended bill that the supposed cause of action against this defendant for damages arising from the alleged detention of dower did not accrue at any time within five years next before the filing of said amended bill of complaint.

Second. That it appears from said amended bill of complaint that "there now remains in the hands of one Chetlain and this defendant a large sum of money derived from the estate of Martin O. Walker,

d ceased, after the purchase and settlement of all claims against said estate," but it does not appear from said amended bill how such purchase and settlement of claims was made, or that the plaintiff has any interest therein or in the proceeds or result thereof, and said charge is therefore so uncertain that it is impossible for this defendant to make answers thereunto.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said amended bill, and
68 prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

SMALL AND MOORE,
Solicitors for Defendant.

And afterwards, to wit, on the twentieth day of January, in the year of our Lord one thousand eight hundred and eighty-two, there was filed in the office of the clerk of said superior court of Cook county a certain notice, which is in the words and figures following, to wit:

In the Superior Court of Cook County. Chancery.

MARTHA A. WALKER *vs.* GEO. C. RAND *et al.*

To Messrs. Small & Moore, sol'rs for S. O. Walker *et al.*:

69 Please take notice that on Monday, Jan. 23, at 10 o'clock a. m., or as soon thereafter as we can be heard, we shall call up for disposition before Judge Gardner, of said court, the demurrers heretofore filed by you to the amended bill of complaint in the above-entitled cause.

ISHAM, LINCOLN, BERRY & RYERSON;
Compl't's Sol'rs.

Received a copy of the above notice this 20th day of Jan. 1882.
W. H. MOORE,
Sol'r for Certain Defendants.

And afterwards to wit, on the first day of February, in the year of our Lord one thousand eight hundred and eighty-two, said day being one of the days of the January term of said superior court of Cook county, the following, among other, proceedings were had in said court and entered of record, to wit:

70 *Bill.*

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

This cause coming on now to be heard upon the demurrers of the defendants, Samuel Otis Walker, Edward Stone Walker, and Augustus L. Chetlain, filed herein, to the bill of complaint, after argument of counsel and due deliberation by the court said demurrers

are overruled, and said defendants are hereby required to answer said bill of complaint within one week from this date.

And afterwards, to wit, on the eighth day of the same month, in the year aforesaid, to wit, February, A. D. 1882, said day being one of the days of the February term of said court, the following, among other, proceedings were had and entered of record in said superior court of Cook county, to wit:

71 *Bill.*

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

It is ordered that the time for the defendants to answer the bill of complaint herein, as amended, be, and is hereby, extended to February 13th instant.

And afterwards, to wit, on the 10th day of February, in the year aforesaid, to wit, A. D. 1882, there was filed in the office of the clerk of said superior court of Cook county a certain answer, which is in the words and figures following, to wit:

STATE OF ILLINOIS, } *ss.:*
Cook County, }

In the Superior Court. February Term, 1882. In Chancery.

MARTHA A. WALKER *v.* GEORGE C. RAND *et al.*

72 The joint and several answer of Charles E. Brown, Thomas Brown, and Henry G. Tucker to the amendments to the bill and supplemental answer to the answer to the original bill of Martha A. Walker against George C. Rand, John W. Doane, Samuel O. Walker, Edward S. Walker, Augustus L. Chetlain, Charles Fargo, and these respondents.

These respondents, saving and reserving all benefit from the insufficiency of the bill as amended herein, for answer thereto, say that they have no knowledge or information and belief as to the several matters set forth and alleged in said amendments, and therefore they neither admit nor deny the same, and leave the complainant to make proof of such allegations as she shall see fit.

And these respondents, further answering, by way of supplement to the original answer herein, say that in the suit mentioned in the original answer on the 8th day of October, 1881, the circuit court of the United States for the northern district of Illinois, having full jurisdiction of the parties and subject-matter in said suit,
73 rendered a judgment in favor of the respondents, Thomas Brown and Henry G. Tucker, against Amos G. Throop and Robert McClelland, with James Mellon, survivors of Martin O. Walker, and Guy H. Cutting, for ninety-two thousand one hundred and seventy-one dollars ($92,171.00), for damages and costs for the breach of certain covenants mentioned in the declaration in said case, contained in articles of agreement dated July 15, 1865, by and between Chauncy Tucker, Henry G. Tucker, and Thomas Brown, partners

under the firm name and style of Tucker, Brown & Co., parties of the first part, and Martin O. Walker, James Mullins, Guy H. Cutting, Amos Throop, and Robert McClelland, composing the Carbon Hill Coal Company of Ohio, parties of the second part, on which the judgment mentioned in the deed of trust set forth in the bill of complaint herein was rendered, a copy of which is attached thereto as an exhibit.

These respondents further say that the judgment mentioned in the said deed of trust for the sum of $119,637.00 and costs of suit rendered by the circuit court of Cook county, in the State
74 of Illinois, at the May term, was reversed by the supreme court of said State, because of an error by the circuit court in sustaining a demurrer to certain pleas, and the cause remanded, with directions to overrule the demurrer and allow the plaintiffs to reply, and thereafter no further proceedings whatever were had or taken in said suit, but another suit was brought by the said Thomas Brown and Henry G. Tucker, survivors of the firm of Tucker, Brown & Co. (the said Chauncy Tucker having departed this life), against the said Amos G. Throop, Robert McClelland, and James Mallens (the said Martin O. Walker and Guy H. Cutting having died before said suit was commenced) in the circuit court of the United States for the northern district of Illinois, on the 1st day of June, 1877, upon the said articles of agreement, and for a breach of the covenants therein contained. And the said Amos G. Throop and Robert McClelland were served with process and appeared and plead to the declaration therein, but the said James Mullins was not served, he being a resident of the State of Ohio, and upon the trial of said issue the judgment aforesaid was rendered on the 8th day of October, 1881, for the sum of $92,171.00 and costs.

75 These respondents, further answering, say that said judgment remains in full force, and has not been paid or satisfied, and said judgment is secured by the deed of trust executed by the said Martin O. Walker and his wife, Martha A. Walker, the complainant in this suit, to Charles E. Brown, dated April 15, 1874, and recorded on the 22d day of May, 1874, in Cook county, Illinois, in book 413 of records, at page 13.

And so respondents aver that the complainant, Martha A. Walker, is not entitled to dower in the premises described in the bill of complaint as against these respondents until she has satisfied and paid the judgment rendered by the United States circuit court for the northern district of Illinois, as aforesaid.

And now, having fully answered, these respondents pray to be hence dismissed, with their reasonable costs.

THOMAS BROWN.
HENRY G. TUCKER.
CHARLES E. BROWN.

W. C. GOUDY,
Def'ts' Solicitor.

76 And on the same day, to wit, on the tenth day of the same month last aforesaid, to wit, February, A. D. 1882, said day

being one of the days of the February term of said superior court of Cook county, the following among other proceedings were had in said court and entered of record, to wit:

Bill.

MARTHA A. WALKER
v.
GEORGE C. RAND *et al.* } 78517.

Leave is hereby given the defendants to file supplemental answers to the amended bill of complaint in this cause.

And afterwards, to wit, on the thirteenth day of February, in the aforesaid —, to wit, A. D. 1882, there was filed in the office of the clerk of said superior court of Cook county five certain answers, a certain petition, and a certain bond; which said answers, petition, and bond are in the words and figures following, to wit:

77 *The Separate Answer of Charles Fargo to the Original and Amended Bill of Complaint of Martha A. Walker, Complainant.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, THOMAS BROWN, and HENRY G. TUCKER.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bills contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it
78 is or are material or necessary for him to make answer unto, answering, says:

He admits the conveyance by Samuel O. Walker and Edward S. Walker to him, as stated in said bill, but he denies that any demand has ever been made upon him to set out or apportion dower to the complainant in the premises in said bill described.

Further answering, this defendant avers that it was impracticable and impossible for him to set out dower to the complainant in said premises on account of the large amount of taxes, tax sales, mechanics' liens, and a trust deed upon said premises, a copy of which is attached to the bill of complaint in said cause.

This defendant admits that on the 2d day of November, 1878, he conveyed said premises to Carrie Walker, and says that he has had no interest or control over the same since that date.

This defendant denies that he is liable to complainant for damages for detention of dower, as in said bill stated.

This defendant admits the filing of the bill by complainant
79 against him, claiming dower in said premises, and other pieces of real estate, of which said Martin O. Walker died seized, in which she claimed damages for detention of dower, and he admits the filing of the supplemental bill and his appearance in said cause, the obtaining of the final decree, the appeal to and affirmance of said judgment by the appellate court.

In regard to the allegations that said decree was reversed, so far as the same related to all of the property in said decree mentioned, except as to lots 16 to 21, inclusive, in block 9, Fort Dearborn Addition to Chicago, this defendant says that on the tenth day of April, 1878, complainant obtained a decree against this defendant for the sum of $780.00, as damages for the detention of dower in the several pieces of real estate in said bill mentioned, including said lots 16 to 21 above described, and that said decree as to damages was never reversed, but remains in full force and effect; that complainant caused an execution to be issued thereon and placed in the hands of the sheriff; and this defendant further avers that on the twenty-sixth day of May, 1881, he paid said amount of damages to
80 complainant, and said judgment was thereafter, on the thirty-first day of May, 1881, cancelled and satisfied, as appears by the records of this court.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bills charged; and he denies that said complainant is entitled to the relief, or any part thereof, in said bills of complaint demanded, and he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES FARGO,
By WM. H. MOORE, *His Sol'r.*

WILLIAM H. MOORE,
Sol'r for said Def't.

81 *The Separate Answer of Edward Stone Walker to the Original and Amended Bill of Complaint of Martha A. Walker, Complainant*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court, Cook County. In Chancery.

MARTHA A. WALKER

vs.

GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, THOMAS BROWN, and HENRY G. TUCKER.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other

imperfections in said bills contained, for answer thereunto, or to so much and such part thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says:

82 He admits the marriage, seizen, death, and heirship as stated in said bill, but he denies that any demand was ever made upon him to set out or apportion dower to complainant in the premises mentioned in said bill.

And this defendant denies that complainant is entitled to damages against him for detention of dower, and says that at the time of the death of his father, as stated in said bill, and at the time of the filing of the bill against him, his brother, Samuel O. Walker, and others, on the 18th day of August, 1874, he was a minor under the age of twenty-one years.

This defendant admits that in the beginning of the year 1875 he and his brother, Samuel O. Walker, conveyed all their interest in said premises to Charles Fargo, and he says that he has had interest in or control over said property since that time.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bills

83 charged, and he denies that said complainant is entitled to the relief, or any part thereof, in said bills of complaint demanded, and he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD STONE WALKER,
By WM. H. MOORE, *His Sol'r.*

WILLIAM H. MOORE,
Sol'r for said Def't.

The Separate Answer of Samuel Otis Walker to the Original and Amended Bill of Complainant of Martha A. Walker, Complainant

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER

vs.

GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Thomas Brown, and Henry G. Tucker.

84 This defendant, now and at all times hereafter saving and reserving unto himself all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bills contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is — or material or necessary for him to make answer unto, answering, says:

He admits the marriage, seisin, death, and heirship as in said bill

charged, but he denies that any demand was ever made upon him to apportion to complainant her dower in the premises described in said bill.

This defendan admits the appointment of Augustus L. Chetlain as administrator of the estate of Martin O. Walker, deceased, and that this defendant and Edward Stone Walker, in the beginning of the year 1875, conveyed the lots sixteen (16) to twenty-one (21), inclusive, in said bill mentioned, to Charles Fargo, and he
85 admits the conveyance by himself and wife to George C. Rand.

This defendant denies that he is liable for damages for the detention of dower in said premises; and he denies that in the month of June, 1874, or shortly after the death of said Martin O. Walker, or at any time, said complainant made a demand upon him to set out and assign her dower in the said premises.

This defendant admits the filing of the bill of complaint against him claiming dower in said premises and other pieces of real estate of which said Martin O. Walker died seized, in which she claimed damages from said heirs for detention of dower; and he admits the filing of the supplemental bill and his appearance in said cause, the obtaining of the final decree, the appeal to, and the affirmance of, said judgment by the appellate court.

In regard to the allegation that said decree was reversed, so far as the same related to all the property in said decree mentioned, except as to the property above described, this defendant says that on the tenth day of April, 1878, complainant obtained a decree
86 against this defendant for the sum of $260.00 as damages for the detention of dower in the several pieces of real estate in said bill mentioned, including said lots 16 to 21, above described, and that said decree as to damages was never reversed, but remains in full force and effect; and that complainant has caused to be issued an execution thereon, which execution has been placed in the hands of the sheriff.

This defendant denies that there remains in the hands of said Chetlain and himself, or either of them, any sum of money derived from the estate of said Martin O. Walker, deceased.

This defendant admits that claims amounting to more than the sum of two hundred thousand ($200,000) dollars were proved up in the county court of said Cook county against said estate, and that said estate was insolvent.

This defendant denies that said Chetlain, as administrator, and himself, or either of them, contrived and conspired together to defraud the creditors of said estate; or that the publicly gave
87 out that only a small percentage would ever be paid of the face value of said claims; and he denies that said Chetlain and himself, or either of them, negotiated with any parties as to the amount which could be realized from the real and personal estate of said Martin O. Walker, or that said Chetlain and himself, or either of them, used the credit or pledged the moneys to come from the sale of the real and personal estate of said estate or either of them; or that they raised the sum of twenty thousand ($20,000)

dollars, or any sum, or that they, or either of them, applied to the various creditors of said estate and represented to them that they would not be able to get more than about ten per cent. of the face of their claims; or that said Chetlain and himself, or either of them, bought from the creditors of said estate all or any of the claims proved up against it at a small percentage, or at any percentage of their face value, or that any claims were purchased

88 by said Chetlain and himself, or either of them, on the credit of said estate, and in anticipation of the sale of said real and personal estate or either of them; or that any claims were taken in the name of Caroline Kennicott for the use of this defendant, or that they are still so held; or that said Chetlain, in collusion with this defendant, sold at public auction all the real estate of said Martin O. Walker, deceased, to satisfy the debts of said estate; or that any sum of money whatever was paid to this defendant, or said Caroline Kennicott, as his trustee; or that any amount of money remains in the hands of said Chetlain and this defendant, or either of them, belonging to said estate; or that the sum of twenty thousand ($20,000) dollars, or any sum, was fraudulently or in any manner applied to the payment of said claims; or that said complainant was only a surety upon said trust deed; or that there is any fund in the hands of himself and said Chetlain, or either of them, derived from either the real or personal estate of said deceased.

89 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; and he denies that said complainant is entitled to the relief, or any part thereof, in said bills of complaint demanded; and he prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL OTIS WALKER,
By WM. H. MOORE, *His Sol.*
WILLIAM H. MOORE,
Sol'r for Def't

90 *The Separate Answer of Augustus L. Chetlain to the Original and Amended Bill of Complaint of Martha A. Walker, Complainant.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER

vs.

GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit or advantage of exception which can or

may be had or taken to the many errors and other imperfections in said bills contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is or are ma-
91 terial or necessary for him to make answer unto, answering, says:

He admits his appointment as administrator of the estate of Martin O. Walker, deceased, and the sale of the premises in said bill mentioned to George C. Rand on or about November 2d, 1878.

This defendant denies that there remains in the hands of said defendant, Samuel O. Walker, and himself, or either of them, any sum of money derived from the estate of said Martin O. Walker, deceased.

This defendant admits that claims amounting to more than the sum of two hundred thousand ($200,000) dollars were proved up in the county court of said Cook county against said estate, and that said estate was insolvent.

This defendant denies that said Samuel O. Walker and himself, as administrator, or otherwise, or either of them, contrived and conspired to defraud the creditors of said estate, or that they publicly
92 gave out that only a small percentage would ever be paid of the face value of said claims; and he denies that said S. O. Walker and himself, or either of them, negotiated with any parties as to the amount which could be realized from the real and personal estate of said Martin O. Walker, or that said S. O. Walker and himself, or either of them, used the credit or pledged the moneys to come from the sale of the real and personal estate of said estate, or either of them, or that they raised the sum of twenty thousand ($20,000) dollars, or any sum, or that they, or either of them, applied to the various creditors of said estate and represented to them that they would not be able to get more than about ten per cent. of the face of their claims, or that said S. O. Walker and himself, or either of them, bought from the creditors of said estate all or any of the claims proved up against it at a small percentage, or at any percentage, of their fall value; or that any claims were purchased by said S. O. Walker and himself, or either of them, on the
93 credit of said estate and in anticipation of the sale of said real and personal estate, or either of them, or that said S. O. Walker, in collusion with this defendant, sold at public auction all the real estate of said Martin O. Walker, deceased, to satisfy the debts of said estate, or that any sum of money whatever was paid to this defendant which belongs to said estate, or that any amount of money remains in the hands of said S. O. Walker and this defendant, or either of them, belonging to said estate; or that the sum of twenty thousand ($20,000) dollars, or any sum, was fraudulently or in any manner applied to the payment of said claims, or that there is any fund in the hands of said S. O. Walker and himself, or either of them, derived from either the real or personal estate of said deceased.

And this defendant avers that prior to the commencement of this suit he paid over to the various creditors of said estate all the money

in his hands as administrator, and was duly discharged from
94 his duties as administrator of said estate prior to the commencement of this suit.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bills charged; and he denies that said complainant is entitled to the relief, or any part thereof, in said bills of complaint demanded; and he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

AUGUSTUS L. CHETLAIN,
By WM. H. MOORE, *His Sol'r.*

WILLIAM H. MOORE,
Sol'r for said Def't.

95 *The Joint and Several Answer of George C. Rand and John W. Doane to the Original and Amended Bill of Complaint of Martha A Walker, Complainant.*

STATE OF ILLINOIS, *Cook County:*

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER

vs.

GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, THOMAS BROWN, and HENRY G TUCKER.

These defendants, now and all times hereafter saving and reserving unto themselves all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bills contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised
96 it is or are material or necessary for them to make answer unto, answering say:

That they admit that Martha A. Walker married Martin O. Walker in the date named in said bill, and that said Martin O. Walker died intestate seized of lots sixteen (16) to twenty-one (21), inclusive, in block nine (9), Fort Dearborn Addition to Chicago, Cook county, Illinois, on the date named in said bill, leaving him surviving complainant, his widow, and his two sons, Samuel Otis Walker and Edward Stone Walker, his only heirs-at-law.

These defendants, further answering, neither admit nor deny that complainant made a demand upon the heirs of said Martin O. Walker for her dower in the lots above named, but these defendants admit that in the year 1878 said premises were sold by Augustus L. Chetlain, as administrator of the estate of said deceased, to this defendant, George C. Rand, at the date named in said bill.

As to the allegations in said bill contained that said Rand
97 has refused to assign dower in said premises these defendants aver that it has been impracticable and impossible so to do on account of the large amount of taxes, tax sales, mechanics'

liens, and the trust deed upon the same, a copy of which is attached to said bill.

These defendants admit the conveyance by Charles Fargo to Carrie Walker, and the conveyance by Carrie Walker and Samuel O. Walker, her husband, to this defendant, George C. Rand, but they allege that said Rand now holds the legal title to said premises.

These defendants deny that said premises are free from incumbrances, and charge the fact to be that they are subject to a large amount of taxes, tax sales, mechanics' liens, and to the trust deed above referred to.

These defendants deny that they, or either of them, are liable in damages for the detention of dower, as in said bill charged, or otherwise.

These defendants admit the making of the trust deed by said Martin O. Walker and wife to secure the judgment against
98 said Walker and the reversal of said judgment by the supreme court of the State of Illinois, as in said bill alleged, but they deny that said trust deed has ceased to be a lien on said premises.

And these defendants deny that said supreme court has construed the lease on which said judgment was founded and the legal liability thereunder of the lessee and lessors thereon, or that it has decided and adjudicated that under said lease no liability existed on the part of said Martin O. Walker to the persons who were the lessors therein and the creditors in said judgment, and that no action could lie or judgment be recovered to enforce any liability on the part of said Martin O. Walker on the covenants contained in the lease in said bill mentioned; but these defendants aver the truth to be that in said suit the question presented to said supreme court was as to the sufficiency of certain pleas, to which demurrers *has* been sustained by the court below, and that the only decision made by said supreme court was that said pleas were sufficient and
99 that the court below erred in sustaining the demurrer, and said judgment was reversed and the cause remanded, with directions to the court below to overrule the demurrers to the second, third, and fifth pleas of the defendant, and to allow the plaintiffs to reply to said pleas, and that thereafter said suit was abandoned, and no further proceedings whatever taken thereon, but that said plaintiffs commenced another suit upon the same covenants contained in said agreement, as hereinafter stated.

These defendants deny that said complainant signed said lease as surety, as in said bill stated, or that her obligation is extinguished by the reversal of said judgment; or that said trust deed has become null and void as between the grantors, the grantee, and the *cestui que* trusts therein, or that the obligation of complainant has become extinguished or the lien thereof discharged as between complainant and the estate of her husband and his heirs, or persons claiming under them, or that the enforcement of said deed
100 of trust would be without effect upon the estate of dower in said land, or that she is entitled to indemnity from the estate of her said husband in case the whole or any part of said prem-

ises should be taken to satisfy his liability, or the liability of his estate, to the person or persons who were or are *cestui que* trusts under said trust deed, or that said estate is holden to such indemnity, or that the heirs of said Martin O. Walker, or any or all persons claiming by, through, or under them, are estopped to set up said trust deed as against the dower of said complainant, or that said complainant is entitled to have the same declared null and void, or have a release of the same executed to her; but these defendants aver the facts to be that after the reversal of said judgment in said bill mentioned by said supreme court, and prior to the commencement of this suit, to wit, on the first day of June, 1877, the defendants, Thomas Brown and Henry G. Tucker, who were the surviving members of the firm of Tucker, Brown and Company
101 commenced a suit on the common law side of the circuit court of the United States for the northern district of Illinois upon the covenants of the agreement mentioned in the trust deed attached to said bill against Amos D. Throop,, Robert McClellan, and James Mullins.

That thereafter said Throop and McClellan only were duly served with process issued out of and under the seal of said United States circuit court, and that on the 8th day of October, 1881, a judgment was rendered in said last-named court against said Throop and McClellan upon the covenants of the lease above mentioned for the sum of ninety-two thousand one hundred and seventy-one ($92,171) dollars and costs, and that execution was duly issued thereon against them, and each of them, which judgment remains in full force, unsatisfied and unreversed; and these defendants aver that said trust deed is now a valid and existing lein upon said premises to secure the payment of said judgment.

These defendants, further answering, deny that there is
102 any money in the hands of said Augustus L. Chetlain and Samuel O. Walker, or either of them, derived from the estate of said Martin O. Walker, deceased, in any manner which ought to be applied to the extinguishment of said trust deed, or that any claims were bought up by said Chetlain and Walker, or either of them, out of any moneys derived from said estate by them, or either of them.

These defendants deny *deny* that said property was worth more than the sum of forty thousand ($40,000) dollars at the time this defendant Rand purchased the same at administrator's sale, or that the liability under said deed of trust has been satisfied out of the estate of her husband, or that she is entitled to dower therein free and discharged of all incumbrance under and by virtue of said trust deed, or that said defendants, or either of them, have received a fund for the satisfaction of the liability arising under said trust deed, or that they, or either of them, are estopped from setting up said trust
103 deed as against the claim of complainant for dower, or that they, or either of them, are bound to indemnify complainant for her dower rights in said premises as against said trust deed.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bills charged,

and they deny that complainant is entitled to the relief, or any part thereof, in said bills of complaint demanded; and they pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE C. RAND AND
JOHN W. DOANE,
By WM. H. MOORE,
Their Sol'r.

WILLIAM H MOORE,
Sol'r for said Def'ts.

104 STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STONE WALKER, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker.

To the honorable the judges of the superior court of Cook county, in chancery sitting:

Your petitioner, George C. Rand, respectfully shows that he is one of the defendants in the above entitled cause.

That at the time of the commencement of this suit he and his co-defendants, Charles E. Brown, Thomas Brown, and Henry G. Tucker, were, and still are, citizens and residents of the State of New York.

That the complainant in said cause, at the time of the
105 commencement of this suit was, and still is, a citizen and resident of the State of Illinois.

That said suit was commenced on the fourth day of April, 1881, on the chancery side of said court, by complainant to recover her dower in the premises mentioned in the bill of complaint filed in said cause.

That the title to said premises at the time of the commencement of said suit was, and now is, in your petitioner alone, subject to the lien of the trust deed, a copy of which is attached to said bill.

That the party for whose benefit said trust deed was given is the defendant, Thomas Brown, above named.

That said cause is still pending and undetermined, and that the amount in controversy therein exceeds, exclusive of costs, the sum of five hundred ($500) dollars.

Your petitioner states that in said suit there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between said Martha A. Walker and your petitioner and the said Thomas
106 Brown, Charles E. Brown, and Henry G. Tucker.

Your petitioner further states that said cause could not have been tried at any term before the present term of this court.

Your petitioner therefore desires to remove said cause before the

trial thereof into the circuit court of the United States for the northern district of Illinois, at the next term thereof, and, for that purpose, your petitioner is ready and willing to give sufficient surety, as is by law required to be done in such cases, and hereby offers his bond, with William H. Moore, of Chicago, Illinois, as surety, in the penal sum of five hundred (500) dollars, conditioned as the law directs.

Your petitioner prays that said bond as offered may be accepted, and that said suit may be removed into the said circuit court of the United States for the northern district of Illinois, for the next term thereof, pursuant to the act of Congress in such case made and provided, and that no further proceedings be had therein in this court.

107 And your petitioner will ever pray, &c.

GEORGE C. RAND.

WILLIAM H. MOORE,
Att'y for Pet'r.

Know all men by these presents that we, George C. Rand, of the city of New York, county of New York and State of New York, as principal, and William H. Moore, of the city of Chicago, county of Cook and State of Illinois, as surety, are held and firmly bound unto Martha A. Walker, of said city of Chicago, in the penal sum of five hundred (500) dollars, to be paid to her, her heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals, this seventh day of February, A. D. 1882.

The condition of the above obligation is such that whereas
108 a suit was brought on the fourth day of April, 1881, in the superior court of Cook county, by the above-named Martha A. Walker against said George C. Rand and other defendants, which *said* is still pending in said superior court;

And whereas said George C. Rand has filed a petition in said superior court for the removal of said cause into the circuit court of the United States for the northern district of Illinois, at the next term thereof:

Now, therefore, if the above-bounden George C. Rand shall enter or cause to be entered in the said circuit court of the United States on the first day of the term of said court next ensuing after the order of said Supreme Court for the removal of said suit into said circuit court of the United States a copy of the record in said suit, and pay all costs that may be awarded by said circuit court of the United States, if the said last-named court shall hold that said cause was wrongfully or improperly removed thereto, and do or cause to be done such other acts as by law — required to be done in such
109 cases, then the above obligation to be void; otherwise to remain in full force and effect.

GEORGE C. RAND. [SEAL.]
WILLIAM H. MOORE. [SEAL.]

And afterwards, to wit, on the twentieth day of the month last aforesaid, in the year last aforesaid, to wit, February, A. D. 1882, said day being one of the days of the February term of said superior court of Cook county, the following, among other proceedings were had in said court and entered of record, to wit:

Bill.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, Edward Stone Walker, Augustine L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker. } 78517.

110 On petition of George C. Rand, one of the defendants, he having filed herein a bond according to the act of Congress in such case provided, it is ordered that this cause be, and is hereby, transferred to the circuit court of the United States in and for the northern district of the State of Illinois, and that the clerk of this court forthwith transmit to said United States circuit court a transcript of papers and pleadings filed in this cause, and of all orders made and entered of record herein.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, John J. Healy, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of record in a certain cause lately pending in said court, on the chancery side thereof, wherein Martha A. Walker was complainant and *and* George C. Rand *et al.* were defendants.

111 In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, this sixth day of March, A. D. 1882.

[SEAL.] JNO. J. HEALY, *Clerk.*

Endorsed: Filed Mar. 6, 1882. W. H. Bradley, clerk.

112 Afterwards, to wit, on the eighth day of May, in the adjourned May term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

A motion having been made by the counsel of the plaintiff to remand this cause, and it having been heretofore argued by the counsel of the respective parties and considered by the court, it is ordered that the motion to remand this cause to the State court be overruled.

Afterwards, to wit, on the fifth day of August, in the July term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER } In Chancery.
vs.
GEORGE C. RAND *et al.*

113 And now, on motion of solicitors for said complainant, it is ordered that she have leave to file her replication to all answers on file in this cause, *nunc pro tunc*, as of the sixth day of March, A. D. 1882. And, on motion of said solicitors and proof of due notice of such motion to the solicitors for said defendants, it is ordered that said complainants have leave to file herein instanter a supplemental bill of complaint, and that all of the defendants who have appeared to the original bill of complaint herein answer said supplemental bill on or before the fifth day of September, A. D. 1882, and that a summons issue herein against John N. Jewett, who is made a defendant to said supplemental bill.

On the same day, to wit, on the fifth day of August, 1882, came the complainant, by her solicitors, and filed in said clerk's office her replication to all the answers in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County,

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

M. A. WALKER *vs.* GEO. C. RAND *et al.*

114 The replication of Martha A. Walker, complainant, to the answers of George C. Rand, John W. Doane, Samuel O. Walker, Edward S. Walker, Augustus L. Chetlain, Charles Fargo, and to the answers and supplemental answers of Charles E. Brown, Thomas Brown, and Henry G. Tucker.

This repliant, saving and reserving to herself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto, says that she will aver, maintain, and prove her bill of complaint as amended to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever, in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true.

All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she has already prayed.

ISHAM, LINCOLN, BURRY & RYERSON,
Solicitors for Complainant.

Endorsed: Filed this fifth day of August, A. D. 1882, *nunc pro tunc*, of M'ch 6, 1882. W. H. Bradley, clerk.

115 On the same day, to wit: On the fifth day of August, 1882, came Martha A. Walker, by her solicitors, and filed in said clerk's office her supplementary bill in said entitled cause, which said supplmentary bill .. in the words and figures following, to wit:

Supplemental Bill.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MARTHA A. WALKER *v.* GEO. C. RAND *et al.*

To the honorable judges of said court, in chancery sitting:

Martha A. Walker, complainant in the original bill in the above-entitled cause, by leave of court for that purpose first had and obtained, presents to the court this her supplemental bill herein, and makes parties defendant hereto all of the said defendants in said original bill, and also John N. Jewett, a citizen and resident of the State of Illinois.

And, thereupon, your oratrix complains and shows to the court that on the fourth day of April, A. D. 1881, she filed her original bill of complaint in this cause, setting forth that she was
116 the widow of Martin O. Walker, deceased; that said Walker was seized during his lifetime and during the time he was married to your oratrix in fee-simple of the following real estate property, situated in the county of Cook and State of Illinois: Lots sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one, in block nine, Fort Dearborn Addition to Chicago, and that your oratrix was entitled to dower therein, and that the defendants to said original bill of complaint, at the time of so filing said original bill of complaint, and at divers times theretofore, had withheld from your oratrix her dower in said premises and refused to set out the same to her.

Your oratrix further show- that in said original bill of complaint she set forth that the said Martin O. Walker during his lifetime had executed a certain indenture, conveying certain premises in trust to Charles E. Brown to secure a certain judgment existing against the said Martin O. Walker and others, or any judgment that might be rendered against the said Martin O. Walker on the covenants
117 of the lease upon which the said existing judgment had been rendered, and attaching a copy of said deed of trust to said original bill of complaint and making reference thereto for the specific trust therein contained.

That prior to the filing of said original bill of complaint a judg-

ment to secure which said deed of trust had been executed had been set aside by the supreme court of the State of Illinois and had ceased to exist, and that said deed of trust has ceased to be a lien on said premises for the purposes for which said lien was created; that the said supreme court had construed said lease on which said judgment was founded and the legal liability thereunder and the lessors therein, and had decided and adjudicated that under said lease no liability existed on the part of Martin O. Walker to the lessors therein.

That said deed of trust had therefore wholly ceased to be a lien or charge upon the said land as against your oratrix, and that she was entitled to have her dower in said land and premises set out to her regardless of said trust deed.

That in the event of any liability being established against
118 said land there was in the hands of said John N. Jewett, as trustee, the sum of more than twenty-five thousand [dollars] as a fund to be first paid upon any liability that might accrue under said deed of trust; and that there was in the hands of Augustus L. Chetlain and Samuel O. Walker a large amount of money, also applicable to the satisfaction of any judgments obtained on said lease.

And for greater particularity as to the matters and things above set forth, and as to the matters and things in said original bill of complaint contained, your oratrix now prays leave to refer to said original bill of complaint, and prays that the same may be considered in connection with this her supplemental bill.

And your oratrix further shows that all the defendants to said bill of complaint have answered thereto, and that she has filed general replications to said answers.

That afterwards, on, to wit, the twentieth day of June, A. D. 1881, said defendants, Thomas Brown, Henry G. Tucker, and Charles E. Brown, answered said original bill of complaint, and set up, among other things, that they denied that said deed of trust had
119 ceased to be a lien on said premises, or that the dower interests of your oratrix was paramount to the said deed of trust, or that said mortgage had become released as to you oratrix'- right of dower, or that no action could be maintained on the lease on which said prior judgment had been recovered, and aver that a suit had been commenced in this court on said lease and on the same cause of action by the said Thomas Brown and Henry G. Tucker, as surviving partners of Tucker, Brown & Company, and that said plaintiffs had a good cause of action and were entitled to recover a judgment thereon; and that said judgment when recovered would be within the terms of said deed of trust, and that said deed of trust would thereupon stand security for the same; and said defendants in and by their answer denied that your oratrix had signed said deed of trust as surety for her said husband's debt; to which answer, for greater particularity as to the matters and things therein contained, reference is hereby made.

That on the eighteenth day of December, A. D. 1881, your
120 oratrix filed certain amendments to said bill of complaint, and for the matters and things therein contained reference thereto is hereby made.

That on, to wit; the tenth day of February, A. D. 1882, the said defendants, Charles E. Brown, Thomas Brown, and Henry G. Tucker, filed an answer to the said amendments of said bill and their "supplemental answer to the answer of the original bill," and in and by said answer they set up, among other things, that in said suit mentioned in their original answer, and on the eighth day of October, A. D. 1881, this court having jurisdiction of the parties and subject-matter, rendered a judgment in favor of said defendants, Thomas Brown and Henry G. Tucker against Amos G. Throop and Robert McClelland, impleaded with James Mullen, survivors of Martin O. Walker and Guy H. Cutting, for ninety-two thousand one hundred and seventy dollars for damages and costs for the breach of the covenants of the lease, to secure which said deed of trust had been given, and claiming that said judgment came within the provisions of said deed of trust, and was a lien upon said premises paramount to the claim of your oratrix for dower, and for greater particularly
121 as to the contents of said answer reference is hereby made.

Your oratrix further shows that she has filed replications to all of said answers, and she hereby denies that any such proceedings as are in said answer set forth have been had or taken in this court, and calls for strict proof thereof; and she avers that if any suit has been brought in this court, founded upon the lease heretofore mentioned, and if any such judgment has been recovered against the said Amos G. Throop and Robert McClelland for the sum of ninety-two thousand one hundred and seventy-one dollars and thirty-two cents and costs of suit, or for any other sum, then such judgment was obtained fraudulently and by collusion, and in pursuance of a conspiracy to injure your oratrix, between said Thomas Brown and Henry Tucker and the said McClelland and Throop, which conspiracy was entered into for the purpose of allowing said judgment to be collusively entered in this court in a suit to which your oratrix was not a party, and thereby establishing, in spite of your oratrix, in a proceeding wherein she had no opportunity to
122 defend herself, a charge and lien upon her estate under said trust deed, and by the collusive assents of said McClelland and Throop, to cheat your oratrix out of her defence thereto, and to get under the guise of a pretended judgment what said conspirators thought would be a claim, to recover which they could make use of the said trust deed so executed as aforesaid by the said M. O. Walker.

And your oratrix shows that the said Thomas Brown and Henry Tucker sometimes pretend, as in their last-mentioned answer, that they have recovered a valid judgment on the covenants of said lease, and that they did commence suit on the covenants of said lease on the first day of June, A. D. 1877, and that a judgment was entered in said suit upon the eighth day of October, A. D. 1881; but your oratrix calls for strict proof of any such judicial proceedings, and avers that if any such they were, then they were had in pursuance of a collusive and fraudulent agreement between one William C. Goudy, as attorney for said Thomas Brown and Henry Tucker, and said John N. Jewett, as attorney for said Throop and

McClelland, whereby it was agreed by and between said
123 Brown, Tucker, and Goudy on the one part, and said Throop McClelland, and Jewett on the other, that such judgment should be entered as in said last-mentioned answer set forth, and that the said Thomas Brown and Henry Tucker, before the entry of such judgment, should execute and deliver unto the said Throop and McClelland a quittance from any such judgment that might be obtained against them in pursuance of any such agreement and a complete release therefrom; and also an agreement on the part of said Thomas Brown and Henry Tucker that they would not use said judgment against the persons against whom it was entered, and would only use said judgment so to be obtained in the attempt to evade thereby by their collusive action and just defences of your oratrix, and to enforce the provisions of said trust deed against her inequitably.

Your oratrix therefore insists that if any such suit there was, and if any such judgment there was, then said suit was prosecuted and said judgment was entered in direct fraud of your oratrix,
124 and through and by a direct imposition on this court, inasmuch as said parties gave out and represented to this court that the interests they represented in said cause were antagonistic, and that they were *bona fide* opponents in said litigation, when, in truth and in fact, they were working together and on one and the same side, and in the same interest, and were endeavoring only to collusively obtain the form of a judgment, which had already, and in advance, been released and extinguished as against the parties against whom said judgment was nominally to run, and was to be used as a judgment only against your oratrix, who was not then a party defendant to said cause and had no opportunity to protect herself in the premises; and your oratrix insists therefore that there were no proper parties to said cause before this court; that said proceedings, if any such there was, was wholly in fraud of this court and of your oratrix, and was conducted as an imposition upon them.

Your oratrix further shows that the said John N. Jewett,
125 in further pursuance of the conspiracy to defraud your oratrix and to enable the said Tucker, Brown, and Goudy to use a judgment to be entered up against parties already released therefrom, does sometimes pretend that such judgment was entered, the entry of which judgment your oratrix denies, and does sometimes pretend that he has paid on account of said judgment a large sum of money, to wit, the sum of thirty thousand dollars, being the same sum of money, with interest thereon, which is mentioned in the original bill of complaint as being in the hands of John N. Jewett, as trustee, to be applied in exoneration of your oratrix's dower on any judgment that should be obtained on the covenants of said lease; but your oratrix denies that the said John N. Jewett has paid any such sum of money upon any such judgment, and further shows to the court that said Jewett now has, or should have, in his possession or control a sum of money exceeding the sum of thirty thousand dollars held by him in trust to be applied on any judg-

126 ment that may be obtained upon the covenants of said lease and in exoneration of your oratrix's dower in the premises.

(The following amendment is interlined by leave of court:)

"And your oratrix further shows that before the time of the entry of the said pretended judgment in favor of said Brown and Tucker all liability upon said lease had been extinguished and there was nothing due under the covenants thereof to said Brown and Tucker or to any other person, and that if a suit be brought upon the covenants of said lease were properly and fairly defended no judgment could be obtained thereon for the reason, among other good and sufficient reasons, that said lessees had been evicted by said lessors from part of the premises demised in and by said lease.

"And your oratrix further avers that prior to the entry of said pretended judgment said lessees, or the persons representing them or their assigns or their estates, had fully settled all liability accruing or that had accrued to said lessors, if any such liability ever had accrued, and said Tuckers and Brown had acknowledged full

127 satisfaction of all liability accruing under the covenants of said lease, and that the estate of said Martin O. Walker and his heirs, representatives, and their assigns, had contributed to the settlement and extinguishment of said claim of Tucker, Brown & Co. more than the proportion of said claim equitably due from and to be paid by said Martin O. Walker or his estate."

In tender consideration whereof and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said defendants to said original bill of complaint and the said John N. Jewett, all of whom are hereby made defendants to this supplemental bill, may, to the utmost of their respective knowledge, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, but not under oath, their answers under oath being hereby expressly waived, and that

128 as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and that said John N. Jewett may more particularly set out to the court how much money he now holds as trustee as aforesaid to be applied upon any judgment that may be obtained upon the covenants of said lease, and how much money he has applied on any such judgment, and from what sources he obtained any such money, and that he may more particularly state what, if any, agreement was made between the said Thomas Brown and Henry Tucker, or either of them, or any one in their behalf, of the said William C. Goudy, on the one part, and himself, said Jewett, or said Amos G. Throop, or Robert McClelland, or by any or either of them, on the other part, or by any one in their behalf, touching and concerning any judgment to be entered in any suit pending or thereafter to be brought, founded upon the covenants of said lease, and that he, the said Jewett, may also set forth and discover in full any such

129 agreement, with all the terms and provisions thereof, and that he, the said Jewett, may also set forth and discover any

and every agreement entered into by which any of the parties to any suit brought since the year A. D. 1876, or hereafter to be brought, founded on the covenants of said lease, by and between any of the parties to said suit concerning the effects to be given any judgment to be rendered therein, and that if there be any such judgment as is set up and relied on in the supplementary answer of said Charles E. Brown, Thomas Brown, and Henry G. Tucker, filed herein on the tenth day of February, A. D. 1882, that such judgment may be found by this court fraudulent in law and in fact, and the entry thereof to have been obtained by an imposition on this court, and that such judgment, if any there be, may be set aside and held for naught, and held to be no bar to or cloud upon the dower right of your oratrix in the premises, and that any such judgment may be held to be no basis for any lien through or by said trust
130 deed on said dower interest, and that there may be granted unto your oratrix all the relief prayed in and by her original bill of complaint, and that your oratrix may have such other, further, and different relief in the premises as the nature of this case may require and to your honors may seem meet:

May it please your honors to enter a rule in this cause upon all defendants to said original bill of complaint that they do, within a short time to be fixed in said order, answer unto this supplemental bill, and that a summons may issue herein commanding the said John N. Jewett, at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree as to this honorable court shall seem meet.

And your oratrix will ever pray, &c., &c.

MARTHA A. WALKER,
By ISHAM, LINCOLN, BURRY & RYERSON,
Her Solicitors.

E. S. ISHAM, *Of Counsel.*

Endorsed: Filed Aug. 5, 1882. Wm H. Bradley, clerk.

131 On the same day, to wit, on the fifth day of August, 1882, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with a return of the marshal thereto attached, *are* in the words and figures following, to wit:

132 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to John N. Jewett, impleaded with George C. Rand *et al.*, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of September next, to answer the bill of complaint, as

amended, and supplemental bill of Martha A. Walker, heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this fifth day of August, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 107th.

[SEAL.] W. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

133 *Special Deputy's Return.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed, and by these presents do appoint, Geo. N. Jones my true and lawful deputy to execute the annexed writ, M. A. Walker *vs.* G. C. Rand *et al.*, and to make return of the execution thereof according to law.

A. M. JONES, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: Upon John N. Jewett, therein named, not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode, with an adult person and a member of his family, to wit, upon the aforesaid John N. Jewett on the fifth day of August, A. D. 1882, with George Cooper.

A. M. JONES,
United States Marshal,
By GEO. N. JONES,
Special Deputy.

Marshal's fees:

1 copies	$ 50
2 miles	12
1 service	2 00
Oath and certificate of service	25
	$2 87

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

—— ——, being duly sworn, deposes and says: That he served the annexed writ, as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me this 7th day of August, A. D. 1882.

[SEAL.] SAMUEL C. HAYES,
Notary Public.

Endorsed: Filed Sept. 2, A. D. 1882. Wm. H. Bradley, clerk.

134 Afterwards, to wit, on the twenty-ninth day of August, in the July term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs. } In Chancery.
GEORGE C. RAND *et al.*

Now comes Charles E. Brown and Thomas Brown, by their solicitor, and, on motion of said solicitor, leave is given said Browns to file their cross-bill herein by the fifteenth day of September next, and the complainant is ruled to answer said cross-bill by the first day of October, A. D. 1882.

135 Afterwards, to wit, on the fifth day of September, 1882, came Charles E. Brown *et al.*, by their solicitor, and filed in said clerk's office their demurrer to the supplemental bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Brown et al.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

The joint and several demurrer of Charles E. Brown, Thomas Brown and Henry Tucker, defendants to the supplemental complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's supplemental bill contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said supplemental bill, and for cause of demurrer show that the said complainant hath not, in and by her said supplemental bill, made or stated

such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against these defendants, or any of them.

136 Wherefore and for divers good causes of demurrer appearing in the said supplemental bill these defendants do demur thereto, and they pray the judgment of this honorable court whether they, or either of them, shall be compelled to make any further or other answer to the said supplemental bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

W. C. GOUDY,
Solicitor for Defendants.

I hereby certify that the foregoing demurrer to the complainant's supplemental bill is, in my opinion, well founded in law.

W. C. GOUDY,
Of Counsel.

STATE OF ILLINOIS, }
Cook County, } *ss:*

William C. Goudy, being first duly sworn, on oath says that he is the solicitor of the defendants, Charles E. Brown, Thomas Brown, and Tucker, in the above-entitled cause, and that the demurrer interposed by the said defendants to the complainant's supplemental bill is not interposed for the purpose of delay.

W. C. GOUDY.

Subscribed & sworn to before me this 5th day of September, 1882.
[SEAL.] EDWIN STEWART,
Notary Public.

Endorsed: Filed this fifth day of Sept., 1882. W. H. Bradley, clerk.

137 Afterwards, to wit, on the twenty-fifth day of September, 1882, came Thomas Brown, by his solicitor, and filed in said clerk's office his cross-bill in said entitled cause, which said cross-bill is in the words and figures following, to wit:

Cross-Bill.

138 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THOMAS BROWN

vs.

MARTHA A. WALKER, GEORGE C. RAND, JOHN W. DOANE, SAMUEL Otis Walker, Edward Stone Walker, Henry G. Tucker, Charles E. Brown, and Augustus L. Chetlain, Administrators of Martin O. Walker, deceased.

The cross-bill of Thomas Brown against Martha A. Walker, George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Henry G. Tucker, Charles E. Brown, and Augustus L. Chetlain, administrators of Martin O. Walker, deceased.

To the judge of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

Your orator, Thomas Brown, a citizen of the State of New York, humbly complaining, showeth unto your honor:

That on the 4th day of April, 1881, Martha A. Walker filed her bill of complaint in the superior court of Cook county against George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Augustus B. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker, and therein alleged that Martin O. Walker was married to the complainant during his
139 lifetime, and was seized in fee-simple of the following-described real estate in Cook county, in the State of Illinois, to wit, lots 16, 17, 18, 19, 20, and 21, in block 9, in Fort Dearborn Addition to Chicago, and, being seized thereof, died on the 28th day of May, 1874, leaving two sons, Samuel Otis Walker and Edward Stone Walker, as his only heirs-at-law, and the said complainant, Martha A. Walker, as his widow, and claimed that she was entitled to dower in said premises; and the bill further alleged that Augustus L. Chetlain was the administrator of Martin O. Walker, deceased, and George C. Rand was the purchaser of said lots and held the title by virtue of two deeds from said administrator and said heirs, and that John W. Doane was interested with said Rand in such purchase and was in possession of the premises; and it was further alleged in said bill that the said lots were subject to the lien of a deed of trust made to Charles E. Brown, in favor of Chauncey Tucker, since deceased, Henry G. Tucker, and Thomas Brown, which lien was created by a deed of trust executed by Martin O. Walker in his lifetime to secure a certain judgment against him in favor of the said Tucker and Brown, and also to secure any other judgment that might thereafter be rendered against him on the covenants of the lease whereon the then existing judgment had been rendered, and making a copy of said deed of trust an exhibit to said bill; and the said complainant claimed in said bill that the said lien had
140 ceased to exist, and that the premises aforesaid were free from any incumbrance which had existed by virtue of said deed

of trust; and the said complainant, in and by said bill, prayed for an assignment of her dower in said premises, and that a decree be entered declaring that the said deed of trust made by the said Walker to the said Brown had ceased to be a lien on said premises as against the rights of the complainants, and that he be required to release the premises to the said complainant.

Your orator further represents that on the 20th day of June, 1881, the said Thomas Brown, Henry G. Tucker, and Charles E. Brown filed an answer to the said bill of complaint, in which they denied that the said deed of trust had ceased to be a lien on said premises, and averred that a suit was then pending on the same causes of action embraced in the judgment recited in said deed of trust in the circuit court of the United States for the northern district of Illinois, wherein Thomas Brown and Henry G. Tucker, surviving partners of Tucker, Brown & Co., were plaintiffs, and that they had good causes of action, and were entitled to recover a judgment in said suit on said lease, which, when recovered, would come within the terms and conditions of said deed of trust, and that the same would stand as security for the payment thereof.

141 Your orator further represents that on the 14th day of December, A. D. 1881, the complainant, Martha A. Walker, by leave of the court, filed an amendment to her original bill.

And your orator further represents that on the 10th day of February, 1882, the said Charles E. Brown, Thomas Brown, and Henry G. Tucker answered the amendments aforesaid, and in said answer they set up and averred that in the suit mentioned in the original answer judgment had been rendered on the 8th day of October, 1881, by the circuit court of the United States for the northern district of Illinois, in favor of Thomas Brown and Henry G. Tucker against Amos G. Throop and Robert McClelland, for $92,171.00 for the breach of certain covenants contained in articles of agreement, which were the same mentioned in the deed of trust set forth in the original bill of complaint, and therein the said defendants claimed that the said judgment came within the provisions of the said deed of trust, and was secured thereby, and was a prior lien to the claims for dower of the said Martha A. Walker.

And your orator further represents that on the 13th day of February, 1882, several answers were filed to the original bill of complaint, as amended, by George C. Rand and John W. Doane and all of the other defendants to said bill.

142 And your orator further represents that replications have been filed to said several answers, and the cause removed, according to the provisions of the act of Congress, from the superior court of Cook county to the circuit court of the United States for the northern district of Illinois.

And your orator represents and avers that on the 15th day of July, 1865, Chauncey Tucker, Henry G. Tucker, and Thomas Brown, partners under the firm name of Tucker, Brown & Co., executed, under seal, a lease to Martin O. Walker, Robert McClelland, James Mullins, Amos G. Throop, and Guy H. Cutting, described as composing the Carbon Hill Coal Company of Ohio, thereby leasing cer-

tain coal mining property near Palestine, Columbiana county, Ohio, for a certain term of years therein specified, and afterwards, on the 26th day of December, 1871, the said Chauncey Tucker, Henry G. Tucker, and Thomas Brown commenced an action of covenant in the circuit court of Cook county, Illinois, against Martin O. Walker, Robert McClelland, James Mullins, and Amos G. Throop, surviving partners of the firm doing business under the name of the Carbon Hill Coal Company (the said Guy H. Cutting being then dead) to recover damages for a breach of the covenants contained in said lease, and such proceedings were had therein that judgment was rendered thereon at the May term, 1873, by the said court in favor of the plaintiffs against the defendant for the sum of $119,637.00,
143 and costs, from which judgment an appeal was prosecuted by the defendants to the supreme court of the State of Illinois, where the same was pending on the 15th day of April, 1874.

And your orator further represents that about one year after the execution of said lease an agreement was made between the lessees by which the said Martin O. Walker and James Mullins assumed the performance of the covenants in said lease, and took exclusive possession of the property therein described, and became entitled to the profits of the business conducted at said mines, and liable for all losses, and the other lessees ceased from that time to have any interest in the leased premises, as between themselves, the said lessees.

And your orator further represents that the said Martin O. Walker and James Mullins, by means of said agreement, were equitably liable to pay the said judgment rendered as aforesaid by the circuit court of Cook county, and the said judgment was rendered for breaches of covenant, for which the said Walker and Mullins were solely and exclusively liable: and, upon this state of facts, on the 15th day of April, 1874, the said Martin O. Walker and Martha A. Walker, his wife, the complainant in the original bill herein, executed a deed of trust to Charles E. Brown, which recited the judgment aforesaid for $119,637.00, and costs, and that the same
144 was pending on appeal in the supreme court, and which was a lien upon the real estate of the said Walker in the county of Cook, and that Thomas Brown was the sole owner of said judgment, and all the incidents thereto, and all the benefit of said judgment, and had full right and power to release and discharge the lien thereof, and that the said Thomas Brown had agreed to release and discharge the said real estate of said Martin O. Walker from the lien of said judgment, and, therefore, the said Martin O. Walker and Martha A. Walker, his wife, in consideration of the premises conveyed to Charles E. Brown, his heirs and assigns, the following-described real estate, situated in the city of Chicago, in Cook county, in the State of Illinois, to wit:

Lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in block nine (9), in Fort Dearborn Addition to Chicago; also the east half ($\frac{1}{2}$) of the south half ($\frac{1}{2}$) of lot six (6), in block thirty-six (36), in the original town of Chicago, in trust to secure the said Thomas Brown the payment of the said judgment, in case

the same should be affirmed in the Supreme Court, and in case the same should be reversed or not affirmed, then for the payment of any judgment that may be rendered in said suit, or in any other suit that may thereafter be brought and founded upon the
145 covenants contained in the lease set forth in the pleadings in said suit, and upon which covenants the said suit or action was founded, as will more fully appear by a copy of said deed herewith filed and made a part of this cross-bill as Exhibit "No. 1."

And your orator further represents that the supreme court of Illinois, at the September term, 1873, reversed the said judgment rendered by the circuit court of Cook county for $119,637.00 and costs, for the reason that the circuit court had erroneously sustained demurrers to certain special pleas interposed as a defence, and the cause was remanded with direction to that court to overrule the demurrers to said pleas and allow the plaintiffs to plead thereto, and thereafter no further proceedings were had in said cause, but the same was abandoned.

And your orator further represents that on the 1st day of June, 1877, the said Thomas Brown and Henry G. Tucker, survivors of the firm of Tucker, Brown & Co.—the said Chauncey Tucker having departed this life—commenced another suit against Amos G. Throop, Robert McClelland, and James Mullins, the said Martin O. Walker and Guy H. Cutting having also departed this life, in the circuit court of the United States for the northern district of Illinois upon the said lease bearing date as aforesaid, July 15th, 1865, and
146 to recover damages for a breach of the covenants therein contained, said breaches having been partly made before the commencement of the prior suit, wherein the said judgment had been reversed, and partly since that time; and the said Amos G. Throop and Robert McClelland alone were served with process. The said James Mullins not being a resident of the State of Illinois was not served, and such proceedings were had in such suit that a trial was had upon the issues therein made, and a judgment was rendered in favor of the plaintiffs, Thomas Brown and Henry G. Tucker, against the defendants, Amos G. Throop and Robert McClelland, on the 8th day of October, 1881, for the sum of $92,171.00 and costs, which judgment remains in full force and effect, and is secured by the terms and conditions of the deed of trust executed as aforesaid by the said Martin O. Walker and Martha, his wife, to Charles E. Brown.

And your orator further represents that although the said judgment was rendered in favor of your orator, Thomas Brown, and his partner, Henry G. Tucker, yet that your orator is the sole owner thereof, and entitled to receive the entire proceeds of said judgment, the said Henry G. Tucker having transferred to your orator all his interest in the causes of action on which the same was rendered.

And your orator represents that the said Martin O. Walker
147 died on the 28th day of May, 1874, intestate, leaving Martha A. Walker, complainant in the original bill, his widow, and two sons, Samuel Otis Walker and Edward Stowe Walker, his only heirs, and that after his death Augustus L. Chetlain was appointed by the

county court of Cook county administrator of the estate of Martha O. Walker; that in the year 1875 the said heirs, Samuel O. Walker and Edward S. Walker, conveyed lots 16, 17, 18, 19, 20, and 21, in block 9, in Fort Dearborn Addition to Chicago, to Charles Fargo; that in the year 1878 the premises last described were sold by the administrator of said Martin O. Walker, in pursuance of a decree of the county court of Cook county, to George C. Rand, and conveyed to him by a deed dated November 2nd, 1878, and that on the same day the said Fargo conveyed said premises to Carrie Walker, wife of the said Samuel O. Walker, and on the same day the said Carrie Walker and Samuel O. Walker conveyed to the said George C. Rand; and your orator avers that John W. Doane had some interest with the said Rand in said premises, and is now in possession thereof.

And your orator further represents that the east half (½) of the south half (½) of lot six (6), in block thirty-six (36), in the original town of Chicago, described in the said deed of trust, has since been sold to satisfy a mechanic's lien existing thereon before the execution of said deed of trust, so that your orator has lost the
148 security of said premises; and he further represents that lots twenty-two (22), twenty-three (23), and twenty-four (24), in block nine (9), in Fort Dearborn Addition to Chicago, were conveyed by a mortgage by the said Martin O. Walker and his wife, executed in his lifetime, and before the deed of trust to the said Charles E. Brown, to secure a debt, and the said title, so derived under the mortgage aforesaid, is now held by residents of the State of Massachusetts, subject to the right of redemption by your orator or the said Charles E. Brown.

To the end, therefore, that the said Martha A. Walker, George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stowe Walker, Henry G. Tucker, Charles E. Brown, and Augustus L. Chetlain, administrator of Martin O. Walker, deceased, may be made defendants to this cross-bill of complaint, and required to answer the same, but not under oath, that being waived, and that upon a final hearing of the cause a decree may be entered foreclosing the lien created by the said deed of trust executed by Martin O. Walker and Martha A. Walker, his wife, to the said Charles E. Brown; that an account may be taken of the amount due to your orator upon the judgment rendered by the circuit court of the United States for the northern district of Illinois on the 8th day of October, 1881, in favor of your orator and Henry G. Tucker against Amos G. Throop and Robert McClelland; that the premises described in said deed of trust,
149 or such part thereof as may be proper, may be ordered to be sold in default of the payment of the amount so found to be due upon said judgment, and that your orator may have such further relief as may be equitable.

Your orator prays that a rule may be entered against the said defendants to this cross-bill requiring them to answer the same within some time to be fixed by the court, &c.

THOMAS BROWN,
By W. C. GOUDY,
His Solicitor.

W. C. GOUDY,
Of Counsel.

EXHIBIT "No. 1."

This indenture, made this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-four, between Martin O. Walker and Martha A. Walker, his wife, of the city of Chicago and State of Illinois, party of the first part, and Charles E. Brown, of the city of Buffalo, in the State of New York, party of the second part, as trustee, as hereinafter specified, witnesseth: That whereas at the May term, A. D. 1873, of the circuit court of Cook county, in the State of Illinois, in a suit therein pending, wherein Chauncey Tucker, Henry
150 G. Tucker, and Thomas Brown were plaintiffs, and Martin O. Walker, Robert McClelland, Amos G. Throop, and James Mullins were defendants, a judgment was recovered by the said plaintiffs against the said defendants for one hundred and nineteen thousand six hundred and thirty-seven dollars ($119,637.00) and the costs of suit, from which an appeal was taken and prosecuted to the supreme court of the State of Illinois, which appeal is now pending and undisposed of in said supreme court, but which judgment is a lien upon the real estate of said Walker in the county of Cook aforesaid; and whereas said Thomas Brown claims to be the sole owner of said judgment and of all the incidents thereto, and to be alone entitled to all the benefit of said judgment, and to have full right and power to release and discharge the lien of said judgment and to hold by assignment all the right and interest in the said judgment and lien of each and every of the other plaintiffs aforesaid; and whereas, in consideration of the security furnished by this indenture, and of the trusts hereby and hereinafter created, the said Thomas Brown has agreed, and does agree, to release and discharge the real estate of said Martin O. Walker from the lien of said judgment:

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar ($1.00) to him paid by the said party of the second part, the receipt whereof is hereby confessed, has and
151 does hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all the following-described lands and premises, situate in the city of Chicago, in the county of Cook, and State of Illinois, to wit: Lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty four (24), in block nine (9), in Fort Dearborn Addition to Chicago; also the east half ($\frac{1}{2}$) of the south half ($\frac{1}{2}$) of lot six (6), in block thirty-six (36), in the original town of Chicago; to have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns, forever; in trust, nevertheless, to secure to said Thomas Brown, or to whomsoever may be the owner of said judgment and entitled in equity to the benefit of the aforesaid lien thereof, the payment of any execution that may be issued on said judgment, with the costs as aforesaid, in case the same shall be affirmed in the supreme court, to which the same is now appealed; and in case the same shall be reversed, or not affirmed, then

for the payment of any judgment that may be thereafter ultimately rendered in said suit, or ultimately rendered in any other suit that may be thereafter brought and founded upon the covenants contained in the indenture of demise set forth in the pleadings in said suit, and upon which covenants the said suit
152 or action is founded; and it is hereby covenanted and agreed that the said judgment, if affirmed as aforesaid, or any other judgment that may as above mentioned be recovered upon the covenants aforesaid, shall be and remains a first and valid lien upon the above-granted lands and premises, which are hereby conveyed in trust upon that use and upon the further trust that in case neither the said Martin O. Walker, his executors, or administrators, nor any other person legally liable upon such judgment as may be ultimately rendered as aforesaid, shall duly pay within the time required by law the sum, or sums, of money that may be legally called for by any execution that may be duly issued upon such judgment as aforesaid, according to the legal tenor and effect of such judgment and execution, then on the application of the person or persons who may be entitled to the said judgment and the indebtedness represented thereby, and to the benefit of such execution as aforesaid, issued thereon, to sell and dispose of the said premises, or such part thereof as may be necessary for the purposes aforesaid, and all the right, title, benefit, and equity of redemption of the said party of the first part and his assigns therein, at public auction, at such place in said city of Chicago, in Cook county, State of Illinois, as may be specified in the notice of such sale, to be given as hereinafter provided, or on such premises, or on any part thereof, as
153 may be specified in said notice of sale, for the highest and best price the same will bring in cash, ten days' notice having been previously given of the time and place of such sale by advertisement in any newspaper at [the] time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including all moneys advanced for taxes and other liens or assessments, with interest thereon, there to pay the amount of money legally called for and payable upon such execution as aforesaid up to the time of such sale, rendering the surplus, if any, with the said Martin O. Walker, his executors, administrators, or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part and his assigns and other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or upon default it shall and may be lawful for the said party of the second part, in his discretion, and in his own name, or
154 otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or

any part of the said premises, for the purposes herein specified under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, in addition to and besides the costs of advertising, sale, conveyance, and moneys advanced, with interest as above provided, than to pay the amount found by the court to be due and payable upon the indebtedness aforesaid. And the said party of the second part, with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his discretion, and also to sell the said premises in mass or in separate parcels, as he may prefer or think best.

And the said party of the first part covenants and agrees to and with the said party of the second part, his successors in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; a reconveyance of said premises shall be made to said party of the first part or its assigns, at his expense, on full payment of all the indebtedness aforesaid, and performance of the covenants and agreements made herein by the party of the first part.

155 And said party of the first part, for himself and his assigns, does further covenant and agree to and with said party of the second part, his heirs, and assigns that in case of a sale and conveyance as aforesaid of said premises any deed or deeds of conveyance made in pursuance of such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said Martin O. Walker, party of the first part herein, and furthermore, John Gray, of the town of Jefferson, Cook county, Illinois, and George Taylor, of the city of Chicago, aforesaid, who are the sureties of and for the said party of the first part upon his appeal bond in the appeal above mentioned to the supreme court from the judgment aforesaid of said circuit court, and who execute this instrument in token of their assent to the provisions thereof and to the release by said Thomas Brown, and his discharge of the lien of said judgment, and of their acceptance in lieu thereof of the provisions of this instrument have hereunto set their hands and affixed their seals the day and year first above written.

M. O. WALKER. [SEAL.]
MARTHA A. WALKER. [SEAL.]
JOHN GRAY. [SEAL.]
GEO. TAYLOR. [SEAL.]

156 The said Gray and Taylor hereby consent and agree that the release by said Brown of certain lands of said defendant Walker from the lien of the said judgment and the acceptance of this security shall not operate to discharge them, said Gray and

Taylor, from liabilitiy as sureties on said appeal bond, or in any way effect or lessen their liability thereon, according to the tenor and effect of said bond.

JOHN GRAY. [SEAL.]
GEO. TAYLOR. [SEAL.]

The words "and Martha A. Walker, his wife" were interlined in the second line from the top of the first page of the foregoing deed of trust, on the date hereof, before the signature and acknowledgement of said deed of trust by said Martha A. Walker, and by the directions of said Martha O. Walker, and in our presence.

Chicago, May 18, 1874.

F. W. BUCKINGHAM.
WILLIAM ENGLAND.

157 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry P. Isham, a notary public in and for the county and State aforesaid, do hereby certify that Martin O. Walker, John Gray, and Geo. Taylor, who are personally known to me as the real persons whose names are subscribed to the foregoing deed of trust and to the memorandum of agreement thereunder written, as having executed the same, appeared before me this day in person and severally acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

[NOTARIAL SEAL.]

HENRY P. ISHAM,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry P. Isham, a notary public in and for the county and State aforesaid, do hereby certify that Martin O. Walker and Martha A. Walker, his wife, who are personally known to me as being the real persons whose names are subscribed to the foregoing deed of trust as having executed the same, appeared before me this day in person, and severally acknowledged that they signed, sealed,
158 and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighteenth day of May in the year of our Lord one thousand eight hundred and seventy-four.

[NOTARY'S SEAL.]

HENRY P. ISHAM,
Notary Public.

No. 109,589. Filed for record May 22, A. D. 1874, and recorded May 27, 1874.

JAMES STEWART, *Recorder.*

(Endorsed): Filed Sept. 25, 1882. Wm. H. Bradley, clerk.

159 Afterwards, to wit, on the thirtieth day of September, 1882, came A. L. Chetlain, by his solicitors, and filed in said clerk's office his demurrer to the supplemental bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Chetlain.

In the Circuit Court of United States. October Term, A. D. 1882.
In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND, A. L. CHETLAIN, *et al*

The demurrer of A. L. Chetlain, one of said defendants, to the supplemental bill of complaint of Martha A. Walker, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said supplemental bill, and for cause of demurrer showeth that the said complainant hath not in and by her said supplemental bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant; and for special cause of demurrer this
160 defendant shows that it appears from said supplemental bill of complaint that this defendant was the administrator of the estate of Martin O. Walker, deceased, but it is not stated that he still continues to be such administrator, or that he now holds or controls any moneys of said estate as such administrator, and said supplemental bill is uncertain in averment as to whether or not this defendant holds such moneys as such administrator or as an individual; and, further, because said supplemental bill is uncertain in averment so far as relates to this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said supplemental bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

W. H. & J. H. MOORE,
Solicitors for said Defendant.

I hereby certify that the foregoing demurrer to the complainant's supplemental bill is, in my opinion, well founded in law.

WILLIAM H. MOORE,
Of Counsel.

STATE OF ILLINOIS, } ss:
Cook County, }

161 William H. Moore makes oath and says: That he is one of the solicitors for said defendant, A. L. Chetlain, in the above

cause, and that the demurrer interposed by said defendant to complainant's supplemental bill is not interposed for the purpose of delay.

WILLIAM H. MOORE.

Subscribed & sworn to before me this 30th day of September, 1882.
[SEAL.] WILLIAM A. PURCELL,
Notary Public.

Endorsed: Filed this 30th day of Sept., A. D. 1882. W. H. Bradley, clerk.

On the same day, to wit, on the thirtieth day of September, 1882, came Edward S. Walker, by his solicitors, and filed in said clerk's office his demurrer to the supplemental bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of E. S. Walker.

In the Circuit Court of United States. October Term, A. D. 1882.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, EDWARD S. WALKER, *et al.*

The demurrer of Edward S. Walker, one of said defendants, to the supplemental bill of complaint of Martha A. Walker, complainant.

162 STATE OF ILLINOIS, } *ss:*
Cook County, }

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said supplemental bill, and for causes of demurrer showeth that the said complainant hath not in and by her said supplemental bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant; and for special cause of demurrer this defendant says that it appears from said supplemental bill that said supposed cause of action against this defendant did not accrue at any time within five years next before the filing thereof, or of the original bill herein.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said supplemental bill, and prays to hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

W. H. & J. H. MOORE,
163 *Solicitors for said Defendant.*

I hereby certify that the foregoing demurrer to the complainant's supplemental bill is, in my opinion, well founded in fact.

WILLIAM H. MOORE,
Of Counsel.

STATE OF ILLINOIS, }
Cook County, } ss:

William H. Moore makes oath and says: That he is one of the solicitors in the above cause, and that the demurrer interposed by the said defendant, Edward S. Walker, to complainant's supplemental bill is not interposed for the purpose of delay.

WILLIAM H. MOORE.

Subscribed & sworn to before me this 30th day of September, 1882.

[SEAL.] WILLIAM A. PURCELL,
Notary Public.

Endorsed: Filed this 30th day of Sept., A. D. 1882. W. H. Bradley, clerk.

On the same day, to wit, on the thirtieth day of September, 1882, came Samuel O. Walker, by his solicitors, and filed in said clerk's office his demurrer to the supplemental bill in said entitled cause, which said demurrer is the words and figures following, to wit:

Demurrer of S. O. Walker.

STATE OF ILLINOIS, }
Cook County, } ss:

In the Circuit Court of the United States. October Term, A. D. 1882. In Chancery.

164 MARTHA A. WALKER
vs.
GEORGE C. RAND, SAMUEL O. WALKER, *et al.*

The demurrer of Samuel O. Walker, one of the defendants to the supplemental bill of complaint of Martha A. Walker, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said supplemental bill, and for causes of demurrer showeth that the said complainant hath not in and by her said supplemental bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant, and for special causes of demurrer he shows:

1st. That it appears from said supplemental bill that the supposed cause of action against this defendant for damages arising

from the alleged detention of dower did not accrue at any time within five (5) years next before the filing of said supplemental bill of complaint, or of the original bill herein.

2nd. That it appears from said supplemental bill of com-
165 plaint that there now remains in the hands of one Chetlain and this defendant a large sum of money derived from the estate of Martin O. Walker, deceased, after the purchase and settlement of all claims against said estate, but it does not appear from said supplemental bill how such purchase and settlement of claims was made, or that complainant has any interest therein, or in the proceeds or result thereof, and that charge is therefore so uncertain that it is impossible for this defendant to make answer thereto.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said supplemental bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

W. H. & J. H. MOORE,
Solicitors for Defendant.

I hereby certify that the foregoing demurrer to the complainant's supplemental bill is, in my opinion, well founded in law.

WILLIAM H. MOORE,
Of Counsel.

STATE OF ILLINOIS, }
Cook County, } *ss:*

William H. Moore makes oath and says that he is one of
166 the solicitors for said defendant, Samuel O. Walker, in the above cause, and that the demurrer interposed by said defendant to complainant's supplemental bill is not interposed for the purpose of delay.

WILLIAM H. MOORE.

Subscribed & sworn to before me this 30th day of September, 1882.

[SEAL.] WILLIAM A. PURCELL,
Notary Public.

Endorsed: Filed this 30th day of Sept., A. D. 1882. W. H. Bradley, clerk.

On the same day, to wit, on the thirtieth day of September, 1882, came George C. Rand and John W. Doane, by their solicitors, and filed in said clerk's office their demurrer to the supplemental bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Rand and Doane.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of United States, October Term, A. D. 1882.
In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, *et al.*

The joint and several demurrer of George C. Rand and John W. Doane, two of the defendants, to the supplemental bill of complaint of Martha A. Walker, complainant.

167 These defendants by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said supplemental bill, and for causes of demurrer show that the said complainant has not in and by her said supplemental bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against these defendants or any of them.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said supplemental bill, and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

W. H. & J. H. MOORE,
Solicitors for said Defendants.

I hereby certify that the foregoing demurrer filed to the complainant's supplemental bill is, in my opinion, well founded in law.

WILLIAM H. MOORE,
Of Counsel.

168 STATE OF ILLINOIS, } ss:
Cook County, }

William H. Moore makes oath and says that he is one of the solicitors for said defendants, George C. Rand and John W. Doane, in the above-entitled cause, and that the demurrer interposed by the said defendants to complainant's supplemental bill is not interposed for the purpose of delay.

WILLIAM H. MOORE.

Subscribed & sworn to before me this 30th day of September, 1882.

[SEAL.] WILLIAM A. PURCELL,
Notary Public.

Endorsed: Filed this 30th day of September, A. D. 1882. W. H. Bradley, clerk.

On the same day, to wit, on the thirtieth day of September, 1882, came Charles Fargo, by his solicitors, and filed in said clerk's office his demurrer to the supplemental bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Fargo.

STATE OF ILLINOIS, } ss:
Cook County, }

In Circuit Court of United States. October Term, A. D. 1882. In Chancery.

MARTHA A. WALKER

vs.

GEORGE C. RAND, CHARLES FARGO, *et al.*

169 The demurrer of Charles Fargo, one of said defendants, to the supplemental bill of complaint of Martha A. Walker, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's supplemental bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said supplemental bill, and for cause of demurrer showeth that the said complainant hath not, in and by her said supplemental bill, made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

And for special causes of demurrer this defendant shows:

1st. That it appears from said supplemental bill that all of said causes of action did not accrue against this defendant within five years next before the filing of said supplemental bill or of the original bill herein.

2nd. That it does not appear from said supplemental bill that all of the damages for the alleged detention of dower by this defendant have not been paid and adjusted with said complainant.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, this defendant doth demand
170 the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said supplemental bill, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

W. H. & J. H. MOORE,
Solicitors for Defendant.

I hereby certify that the foregoing demurrer to the complainant's supplemental bill is, in my opinion, well founded in law.

WILLIAM H. MOORE,
Of Counsel.

STATE OF ILLINOIS, } ss:
Cook County, }

William H. Moore makes oath and says: That he is one of the solicitors for said defendant, Charles Fargo, in the above cause, and that the demurrer interposed by said defendant to complainant's supplemental bill is not interposed for the purpose of delay.

WILLIAM H. MOORE.

Subscribed & sworn to before me this 30th day of September, 1882.

[SEAL.] WILLIAM A. PURCELL,
Notary Public.

Endorsed: Filed this 30th day of Sept., A. D. 1882. W. H. Bradley, clerk.

171 Afterwards, to wit, on the twenty-seventh day of February, 1883, came Charles E. Brown, Thomas Brown, and Henry G. Tucker, by their solicitors, and filed in said clerk's office their answer to the amended supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

172 *Amended Supplemental Bill.*

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

United States Circuit Court, Northern District of Illinois. In Chancery.

MARTHA A. WALKER
v.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD Shaw Walker, Augustus Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker.

The joint and several answers of Charles E. Brown, Thomas Brown, and Henry G. Tucker to the amended supplemental bill of Martha A. Walker against the said respondents and others.

These respondents, saving and reserving all advantage from the imperfections in said bill contained and the want of equity thereof, protesting that they are not bound to answer the same, and praying the same benefit of the same on the final hearing as if they had demurred to said amended supplemental bill, for answer
173 thereunto, or to so much thereof as they are advised is material to be answered by them, admit that the several pleadings set forth in said amended supplemental bill have been filed as therein stated, and they refer to the same for greater certainty as to the contents thereof.

For further answer to said amended supplemental bill, these respondents to say that a judgment was rendered by the circuit court of the United States for the northern district of Illinois, on the 8th day of October, 1881, against Amos G. Throop and Robert McClelland, in favor of Thomas Brown and Henry G. Tucker, for

ninety-two thousand one hundred and seventy-one (92,171.00) dollars, damages for the breach of certain covenants contained in the articles of agreement described in the deed of trust dated April 15th, 1874, executed by Martin O. Walker, and the complainant Martha A. Walker his wife, to Charles E. Brown, one of these respondents, a copy of which deed of trust is attached to the bill filed herein and reference to which is made for greater certainty; and they further say that before the commencement of the suit in which said judgment was rendered one of the parties to said covenents and lease as lessor, to wit, Chauncey Tucker, died leaving these respond-
174 ents, Thomas Brown and Henry G. Tucker, surviving partners, and of the other parties to said lease all died except Robert McClelland, Amos G. Throop, and James Mullins, against whom the said suit was commenced, and of them James Mullins was not served and did not appear.

These respondents further say that an execution was issued on the said judgment to the United States marshal for the northern district of Illinois and returned by him unsatisfied, and that said judgment remains wholly unpaid.

These respondents further aver that about one year after the execution of said lease and covenants an agreement was made between the lessees therein among themselves, by which Martin O. Walker and James Mullins assumed the performance of the covenants in said lease, and took exclusive possession of the property therein described, and became entitled to the profits of the business conducted at the said mines described in said lease and liable for all losses, and the other lessees from that time ceased to have any interest in said leased premises as between themselves, and thereby the said Martin O. Walker and James Mullins became liable in equity to pay
175 any judgment which might be rendered on the lease and covenants therein.

And on the 15th day of April, 1874, said Martin O. Walker and Martha A. Walker, complainant herein, executed the said deed of trust, and thereby pledged the property therein described for the payment of any such judgment as might be rendered on said lease.

These respondents, further answering the said amended supplemental bill, deny that such judgment was obtained fraudulently or by collusion, or in pursuance of a conspiracy to injure the said Martha A. Walker, as alleged in said amended supplemental bill, and they deny that there was any agreement made between William C. Gowdy, as attorney for Thomas Brown and Henry G. Tucker, and John N. Jewett, as attorney for Throop and McClelland, whereby it was agreed by and between the said Brown, Tucker, and Gowdy, on the one part, and said Throop, McClelland, and Jewett on the other, that such judgment should be entered, and that the said Brown and Tucker, before the entry of such judgment, should execute and deliver unto the said Throop and McClelland a discharge and acquittance from any such judgment, and they deny that any such
176 judgment was obtained by imposition upon the court, or that any representations were made to the court contrary to the facts.

These respondents, further answering the said amended supplemental bill, deny that all liability upon said lease had been extinguished, and they deny that there was nothing due under the covenants thereof to said Brown and Tucker, and they deny that prior to the entry of said judgment said lessees or any other persons had fully settled all liabilty accruing or that had accrued, and they deny that the said Tucker and Brown had acknowledged satisfaction of all liability accruing under the covenants of said lease.

They deny that the said Martin O. Walker, his heirs, representatives, and assigns, contributed to the settlement and extinguishment of said claim, but, on the contrary, these respondents say that in equity the property described in the deed of trust was primarily liable for the payment of whatever sum was due under the provisions of said lease to the said Brown and Tucker; and they further say that the said judgment was rendered for the amount of money that was due for the coal actually taken out of the mines described in said lease at the price fixed therein, and that all damages on any further or other breach of said lease were
177 waived by the plaintiff in said suit, and that the amount for which said judgment was rendered had always been admitted by and between the parties to the litigation as being equitably and justly due from the lessees to the lessors, such judgment consisting of the price of the coal actually taken out, and interest thereon.

And these respondents deny all other matters and things in said amended supplemental bill which are material to be answered by them.

And now, having fully answered, they pray to be dismissed, with their costs in this behalf sustained.

CHARLEY E. BROWN.
THOMAS BROWN.
HENRY G. TUCKER.

W. C. GOUDY,
Sol'r Counsel.

Endorsed: Filed Feb. 27, 1883. W. H. Bradley, clerk.

178 Afterwards, to wit, on the first day of March, 1883, in the December term of said court, 1882, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

And now comes on to be heard the demurrers filed to said supplemental bill, and said complainant confesses said demurrers and takes leave to amend her said supplemental bill instanter, which is done by interlineation, and thereupon said complainant modifies

the prayer of said supplemental bill, as to an answer from said defendants thereto, by requiring an answer from said defendants, George C. Rand, John W. Doane, Samuel O. Walker, Edward S. Walker, Charles Fargo, and A. L. Chetlain, only to the second paragraph of said interlined amendment, on the back of page seven of said supplemental bill, and it is ordered that said last-named defendants answer thereto on or before the fifth day of March, A. D. 1883, and it is directed that this order be entered *nunc pro tunc* as of February tenth, A. D. 1883.

Afterwards, to wit, on the second day of March, 1883, came Martha A. Walker, by her solicitors, and filed in said clerk's office
179 her answer to the cross-bill of Thomas Brown in said entitled case, which said answer is in the words and figures following, to wit:

Answer.

Circuit Court of the United States, Northtern District of Illinois.

M. A. WALKER
vs.
G. C. RAND *et al.* } Bill.

THOMAS BROWN
vs.
M. A. WALKER *et al.* } Cross-bill.

The answer of said Martha A. Walker to the said cross-bill of Thomas Brown filed herein.

This defendant, now and at all times hereafter saving and reserving unto herself all manner of benefit and advantage that may or can be had or taken to the many uncertainties, errors, and other imperfections in said cross-bill contained, for answer thereto, or to so much thereof as she is advised it is material for her to make answer unto, answering, says:

That she admits the filing by her of a bill for dower on the fourth day of April, A. D. 1881, and the allegations in said bill contained, as is in said cross-bill set forth; that she admits the filing of answers and amendment to said bill of complaint, the answers thereto, and replications and the removal of said cause to this court, as is in said cross-bill alledged.

This defendant further admits the making of the lease of date July fifteenth, 1865, between Chauncy Tucker, Henry G. Tucker, and Thomas Brown, and the Carbon Hill Coal Company of Ohio, a partnership, &c., as is in said bill alleged, and the bringing of
180 suit in the circuit court of Cook county on the covenants of said lease and the entry of judgment in said suit, as is in said cross-bill alleged. This defendant does not know of any agreement made between the lessees of said lease by which said Martin O. Walker and James Mullins assumed the performance of said lease, and took exclusive possession of the property demised thereby, and agreed to become liable for all the losses, but calls for strict proof of

such agreement; and denies that in pursuance of any such agreement said Martin O. Walker and James Mullins became equitably liable to pay said judgment of said circuit court of Cook county, or any judgment recovered on the covenants of said lease, or that such state of liability existed on the fifteenth of April, 1874.

This defendant also admits the making of the deed of trust dated April fifteenth, 1874, between Martin O. Walker and this defendant, his wife, party of the first part, and Charles E. Brown, party of the second part, referred to in said cross-bill.

This defendant further admits that said judgment for one hundred and nineteen thousand six hundred and thirty-seven dollars, mentioned and referred to in said deed of trust, was reversed by the supreme court of Illinois for error in the rendition thereof.

This defendant, further answering, denies that any other or different suit than said suit so commenced in the circuit court of Cook county has ever been commenced or prosecuted to judgment upon the covenants in the said lease contained, and calls for strict
181 proof of any proceedings had or taken to recover damages for the breach of the conditions of the covenants in said lease contained. This defendant further says that if any such suit has been commenced or prosecuted to recover a judgment for a breach of the covenants in said lease, or to recover a judgment for damages, and any judgment has been obtained in any such suit, then such judgment has been obtained through collusion and fraud on the part of the parties to any such record, and that any such judgment is void, and ought to be held for naught and set aside, and is not binding on this defendant.

This defendant, further answering, says that she does not know, except from the allegations in said bill, whether or not the said cross-complainant, Thomas Brown, is the sole owner in equity of any such judgment or of any claim secured by said trust deed, but calls for strict proof thereof.

This defendant, further answering, says that she admits the death of Martin O. Walker, and that he left him surviving this defendant, his widow, and two sons, Samuel O. Walker and Edward S. Walker, as his only heirs, and that Augustus L. Chetlain was appointed administrator of his estate; that the said two heirs of Martin O. Walker conveyed to Charles Fargo lots 16, 17, 18, 19, and 21, in block 9, in Fort Dearborn Addition to Chicago, as is in said cross-bill alleged; that said property was sold at administrator's sale and bought in by and conveyed to George C. Rand, as is in said bill alleged; and that said Fargo conveyed said premises to Carrie Walker; and that
182 Carrie Walker and Samuel O. Walker, her husband, conveyed said premises to George Rand, as is in said cross-bill alleged, and that John W. Doan has some interest in said premises with said Rand and is now in possession thereof.

This defendant, further answering, says that she does not know of her own knowledge, and can therefore neither admit or deny, whether or not said east half of the south half of lot six, in block thirty-six, of the original town of Chicago has been sold to satisfy a mechanic's lien, and therefore been lost to said cross-complainant as security,

or whether lots 22, 23, and 24, in block 9, in Fort Dearborn Addition to Chicago, mentioned in said deed of trust, were conveyed by a mortgage paramount to said trust deed, or that the title to said last-mentioned property, acquired under said mortgage, is now held by residents of the State of Massachusetts; but this defendant calls for strict proof of each and every averment of said cross-bill in relation thereto, and insists that if it is finally held that any lien exists upon the property in which she now claims dower under said deed of trust, then said east half of the south half of said lot six, in block thirty-six, of the original town of Chicago, and said lots 22, 23, and 24, shall also be held subject to the lien of said trust deed, and be made to bear their proportionate share thereof.

This defendant, further answering, says that all liability of the estate of said Martin O. Walker under said trust deed to Charles E. Brown has wholly ceased and determined, and been satisfied
183 by payment, if any such lien ever existed, and, further, that this defendant signed said deed of trust only by way of security to the debt or liability secured by said trust deed, and her interest in said property ought, therefore, to be taken last to be applied towards the payment of any liability on said lease, and that her interest in said property so mortgaged by her as security has been released by the subsequent action of the other parties thereto.

And now, having fully answered said cross-bill, this defendant prays to be hence dismissed, with her costs in this behalf most wrongfully sustained.

MARTHA A. WALKER,
By ISHAM, LINCOLN, BURRY & RYERSON,
Her Solicitors.

Filed March 2nd, 1883.

WILLIAM H. BRADLEY, *Clerk.*

184 On the same day, to wit, on the second day of March, 1883, came Martha A. Walker, by her solicitors, and filed in said clerk's office her replication to the answer of Thomas Brown *et al.* in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

The replication of Martha A. Walker, complainant, to the joint and several answer of Thomas Brown, Charles E. Brown, and Henry G. Brown to amended supplemental bill.

This repliant, saving and reserving to herself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the

said answer of the said defendants, for replication thereunto, says that she will aver, maintain, and prove her amended supplemental bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defend-
185 ants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she has already praved.

ISHAM, LINCOLN, BURRY & RYERSON,
Solicitors for Complainant.

Endorsed: Filed this second day of March, A. D. 1883. Wm. H. Bradley, clerk.

Afterwards, to wit, on the third day of March, 1883, came George C. Rand and John W. Doane, by their solicitors, and filed in said clerk's office their answer to the amended supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

186 *The Joint and Several Answer of George C. Rand and John W. Doane to the Amended Supplemental Bill of Complaint of Martha A. Walker, Complainant.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Circuit Court of the United States, Northern District of Illinois. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD Stowe Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said amended supplemental bill contained, answering the allegations upon the back of page seven (7) thereof, *these defendants* deny that the lessees of said Tucker, Brown & Co. mentioned in said amended supplemental bill, or the persons repre-
senting them, or their assigns or their estates, had or have fully
187 settled all liability accruing or that had accrued to said lessors, or that said Tucker, Brown & Co. had or have acknowledged full satisfaction of all liability accruing under the covenants of said lease, or that the estate of Martin O. Walker, or the heirs, representatives, or assigns of the same, had or have contributed to the settle-

ment and extinguishment of the claim of said Tucker, Brown & Co. more than the proportion of said claim equitably due and to be paid by said Martin O. Walker or his estate.

And these defendants, having now fully answered all that part of said amended supplemental bill which by a certain order of this honorable court entered of record *nunc pro tunc* as of the 10th day of February, 1883, they are required to answer, pray to be hence dismissed, with their reasonable costs and charges in this behalf sustained.

GEORGE C. RAND AND
JOHN W. DOANE.
By WM. H. MOORE,
Their Solicitor.

Filed March 3rd, 1883.

WILLIAM H. BRADLEY, *Clerk.*

On the same day, to wit, on the third day of March, 1883, came A. L. Chetlain, by his solicitors, and filed in said clerk's office his answer to the amended supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

188 *The Answer of Augustus L. Chetlain to the Amended Supplemental Bill of Complaint of Martha A. Walker, Complainant.*

Circuit Court of the United States, Northern District of Illinois. In Chancery.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

MARTHA A. WALKER

vs.

GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD STOWE WALKER, AUGUSTUS L. CHETLAIN, CHARLES FARGO, CHARLES E. BROWN, THOMAS BROWN, and HENRY G. TUCKER.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said amended supplemental bill contained, answering the allegation upon the back of page seven (7) thereof, *this defendant* denies that the lessees of said Tucker, Brown & Co. mentioned in said amended supplemental bill, or the persons representing them, or their assigns, or their estates, had or have fully settled all liability accruing, or that had accrued, to said lessors; or that said Tucker, Brown & Co. had or have acknowledged
189 full satisfaction of all liability accruing under the covenants of said lease, or that the estate of Martin O. Walker, or the heirs, representatives or assigns of the same, had or have contributed to the settlement and extinguishment of the claim of said Tucker, Brown & Co. more than the proportion of said claim equitably due and to be paid by said Martin O. Walker, or his estate.

And this defendant, having now fully answered all that part of said amended supplemental bill which by a certain order of this honorable court entered of record, *nunc pro tunc*, as of the 10th day of February, 1883, he is required to answer, prays to be hence dismissed, with his reasonable costs and charges in this behalf sustained.

AGUSTUS L. CHETLAIN.
By WM. H. MOORE, *His Solicitor.*

Filed March 3rd, 1883.
WILLIAM H. BRADLEY, *Clerk.*

On the same day, to wit, on the third day of March, 1883, came S. O. Walker, E. S. Walker, and Charles Fargo, by their solicitors, and filed in said clerk's office their answer to the amended supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

190 *The Joint and Several Answer of Samuel Otis Walker, Edward Stowe Walker, and Charles Fargo to the Amended Supplemental Bill of Complaint of Martha A. Walker, Complainant.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois. In Chancery.

MARTHA A. WALKER
vs.
GEORGE C. RAND, JOHN W. DOANE, SAMUEL OTIS WALKER, EDWARD Stowe Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said amended supplemental bill contained, answering the allegation upon the back of page seven (7) thereof, *these defendants* deny that the lessees of said Tucker, Brown & Co., mentioned in said amended supplemental bill, or the persons repre-
senting them, or their assigns, or their estates, had or have
191 fully settled all liability accruing, or that had accrued, to said lessors, or that said Tucker, Brown & Co. had or have acknowledged full satisfaction of all liability accruing under the covenants of said lease, or that the estate of Martin O. Walker, or the heirs, representatives, or assigns of the same, had or have contributed to the settlement and extinguishment of the claim of said Tucker, Brown & Co. more than the proportion of said claim equitably due and to be paid by said Martin O. Walker or his estate.

And these defendants, having now fully answered all that part of said amended supplemental bill which, by a certain order of this honorable court, entered of record, *nunc pro tunc*, as of the 10th day of February, 1883, they are required to answer, pray to be hence

dismissed, with their reasonable costs and charges in this behalf sustained.

SAMUEL OTIS WALKER,
EDWARD STOWE WALKER, AND
CHARLES FARGO.
By WILLIAM A. MOORE,
Their Solicitor.
WM. H. & J. H. MOORE,
Sol'rs for said Defendants.

Filed March 3rd, 1883.

WILLIAM H. BRADLEY, *Clerk.*

Afterwards, to wit, on the fifth day of March, 1883, came John N. Jewett, by his solicitor, and filed in said clerk's office his answer to the amended supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

192 *Original and Supplemental Bill.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND *et als.*

The separate answer of John N. Jewett, one of said defendants, to the amended supplemental bill of Martha A. Walker, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself any and all manner of benefit and advantage of exception which may or can be taken to the many errors, uncertainties, and other imperfections in the said complainant's amended supplemental bill of complaint contained, for answer thereto, or to so much and such parts thereof as it is material or necessary for him to make answer unto, says that he has no personal knowledge of or interest in the original proceedings in this cause, nor has he any information thereof or of the pleadings therein beyond the fact
193 that the complainant has been for a long time prosecuting a claim for dower in the premises in controversy as the widow of Martin O. Walker, deceased, and that said proceedings have been transferred to this court from one of the courts of the State of Illinois for the county of Cook, in said State, but from which of said courts this defendant does not know and is not informed.

This defendant, further answering, admits, upon his own knowledge, that judgment was rendered in this honorable court on or about the 8th day of October, 1881, in an action of covenant then pending therein, wherein Thomas Brown and Henry G. Tucker, survivors of Chauncey Tucker, were plaintiffs, and Amos G. Throop and Robert McClelland, impleaded with one James Mullins, survivors of Martin O. Walker, and Guy H. Cutting, were defendants, for about the sum of ninety-two thousand one hundred and seventy-one dollars damages, besides cost of suit; which action had been pending in said court for several years prior thereto, and that said action was founded upon a lease and agreement made and entered into by and between

the said Thomas Brown, Chauncey Tucker, and Henry G. Tucker and the said Martin O. Walker, Amos G. Throop, Robert McClelland, Guy H. Cutting, and James Mullins, bearing date on or
194 about the — day of July, A. D. 1865, and the defendant is informed and believes that the said lease and agreement is the same one referred to in the deed of trust executed by said Martin O. Walker and the said complainant, as his wife, in the lifetime of said Martin O. Walker, to Charles E. Brown, as trustee, under date of April 15th, 1874, covering the property in which the said complainant claims dower as aforesaid.

That the said lease and agreement related to coal lands and premises situated in Columbiana county, Ohio, leased by the said Martin O. Walker and his associates aforesaid from the said Thomas Brown and his said associates for the period of ten years from the date of said lease and agreement, with the privilege of extension for a further term, the said Walker and his associates agreeing to prosecute the business of mining coal upon said premises diligently and in a workmanlike manner and to pay royalty for the coal mined by them upon said premises as by the said lease and agreement, reference being thereunto had will fully and at large appear.

This defendant, further answering upon information and belief, states it to be true that said Walker and his said associates, shortly after the execution of said lease and agreement, and
195 about the 1st of August, A. D. 1865, took possession of the coal mines therein described, and operated the same under the name of the Carbon Hill Coal and Mining Company (or some similar name) until the month of June, A. D. 1866, during which time the said Walker and his associates paid to said Thomas Brown and his associates the sum of twenty-five hundred dollars ($2,500.00) on account of royalty upon the coal mined by them upon said premises, which, as this defendant is informed and believes, is all that was ever paid by said Walker and his associates, or any or either of them, to the said Brown and his associates, or any or either of them, for or on account of the coal mined by them, or any of them, upon said premises.

That in the month of June, 1866, the said Martin O. Walker purchased from said Amos G. Throop and Robert McClelland all their interest in and under the said lease and agreement, and in and to the said Carbon Hill Coal and Mining Company, and in consideration of the conveyance of said interest to said Walker by said Throop and McClelland the said Walker covenanted and agreed in substance and effect to indemnify and save harmless the said Throop and McClelland of and from any and all claims and demands
196 arising under said lease and agreement; that the said conveyance and agreement of indemnity were embodied in the same instrumen- drafted by this defendant and duly executed by the said parties.

That shortly afterwards the said Guy H. Cutting departed this life without any actual or beneficial interest in said Carbon Hill Coal and Mining Company, as this defendant was informed and believes to be true, leaving said Martin O. Walker and James Mullins

in the sole psssession and control of the premises in said lease and agreement described, so far as possession thereof was obtained, who continued in the possession of said coal mines and to mine and dispose of coal therefrom until the month of September, A. D. 1871, when the said premises were wholly abandoned by said Walker and Mullins, they claiming that the merchantable coal therein was practically exhausted.

This defendant, further answering of his own knowledge, says that afterwards, and about the month of December, A. D. 1871, the said Thomas Brown and Henry G. Tucker, as survivors of said Chauncey Tucker, and for the use of said Thomas Brown, commenced an action of covenant against the said Martin O.

197 Walker, Amos G. Throop, Robert McClelland, and James Mullins, survivors of the said Guy H. Cutting, upon the said lease and agreement in the circuit court of Cook county, Illinois, claiming therein against the said defendants a large amount of damages, both by reason of their failure to pay the stipulated royalty upon the coal taken from the premises in said lease and agreement described and also on account of their failure to work the said coal mines in a good and workmanlike manner and to take therefrom the amount of coal which should have been taken therefrom according to the terms and provisions of said lease.

That said Walker, Throop, and McClelland were duly served with process of summons in said case and appeared and pleaded to the declaration filed therein, but said Mullins was not served with process and did not enter his appearance to said action; that amongst the pleas pleaded by the said Walker, Throop, & McClelland was a plea of eviction from a portion of the demised premises by the plaintiff, to wit, the farming lands or surface of the ground above the said coal mines; also a plea of wrongful detention of said surface or farming lands from the defendants by said plaintiffs.

To which pleas the said circuit court of Cook county sus-

198 tained demurrer filed thereto by said plaintiffs. That said cause afterwards, and, as this defendant now remembers, about the month of March, A. D. 1872, came on for trial before one of the judges of said circuit court of Cook county and a jury upon the issues found therein, and after a trial lasting about thirty days, and involving very large expenses to said defendants, the said cause was submitted to the jury under the instructions of said court, who returned a verdict thereon in favor of said plaintiffs and against the said defendants of upwards of $119,000.00, upon which verdict said court afterwards rendered judgment.

That from the special verdict of the jury given by the said jury in accordance with the statute of Illinois then in force it appeared that a considerable portion of said verdict was made up of damages assessed against the said defendants for their failure to work said coal mines diligently and in good and workmanlike manner, and to take therefrom the coal which reasonably might have been taken, and under the terms of said lease and agreement should have been taken, by said defendant.

This defendant, further answering, states of his own knowledge

that an appeal from the said judgment of the said circuit court was prosecuted by the said Martin O. Walker to the supreme court
199 of the State of Illinois; and that the said judgment of the said circuit court was reversed in and by the said supreme court upon the ground and for the reason, amongst others, that the said circuit court erred in sustaining the demurrers to the *the* said special pleas of eviction from and wrongful detention of the surface of the ground or farming lands above referred to; that said Brown and Tucker neglected to procure the usual mandate from said supreme court within the two years limited by the law for that purpose, after the said judgment of reversal and the said suit and proceedings aforesaid. Upon the lapse of said two years, by reason of said neglect, abated, and were abandoned, but without prejudice to the cause of action involved therein, as this defendant is advised and believes.

And this defendant, further answering upon information and belief, says that whilst the said judgment of the said circuit court of Cook county was in full force and effect, and prior to the judgment of the said supreme court reversing the same, and shortly before the death of the said Martin O. Walker, the said Walker and the said complainant, his wife, executed the deed of trust to Charles E. Brown, aforesaid, to secure the payment of the said judgment and such
200 other judgment as might thereafter be recovered by the said Brown and Tucker upon the covenants of the said lease and agreement of July, 1865.

This defendant, further answering, says that in or about the month of September, 1867, suit was instituted in this court on the law side thereof by said Thomas Brown, Chauncey Tucker, and Henry G. Tucker against said Martin O. Walker, Amos G. Throop, Robert McClelland, Guy H. Cutting, and James Mullins, all of whom, as this defendant now remembers, were then living, upon the covenants and agreements in the said lease and agreement contained, and to the declaration filed therein similar special pleas of eviction from and unlawful withholding of a portion of said demised premises, to wit, the surface of the ground or farming lands, were interposed by said defendants therein.

That demurrers to said special pleas were interposed by said plaintiffs, which were sustained by this honorable court; that a trial in said cause was afterwards had before the court and a jury, resulting in a verdict in favor of said plaintiffs and against the said defendants for about the sum of $11,000.00, it being for the royalty upon the coal taken from said mines by the said defendants, or some of them, according to the price fixed in said lease and agreement prior
201 to the institution of said defendants; said verdict was set aside by this court and a new trial granted, all of which occurred, as this defendant now remembers, in the year 1868 or 1869.

That the files & papers in said cause, as well as the records of this court relating thereto, were all destroyed in the Chicago fire of October 8th and 9th, A. D. 1871, no other trial of said cause having been had, and said cause was abandoned or dismissed out of

court under a general rule of said court relating to causes pending at the time of said fire.

This defendant, further answering, says that the said Martin O. Walker departed this life intestate shortly after the execution of the trust deed aforesaid to said Charles E. Brown and shortly after his marriage with the said complainant, and in the month of May or June, A. D. 1874.

That after the death of said Walker and after the reversal of the judgment of the circuit court of Cook county aforesaid by the supreme court of Illinois, the said Thomas Brown and Henry G. Tucker, as survivors of said Chauncey Tucker, exhibited and filed in this court, and on the chancery side thereof, their bill of complaint praying for a reformation of the said lease and agreement of July, 1865, against said Amos G. Throop, Robert McClelland, and James Mullins, survivors of said Walker and Clutting; that
202 issues were made upon answers filed in said cause and testimony taken on behalf of the respective parties.

That said cause was submitted to this court upon the record therein thus made, and the said cause being so submitted to this court for its decision thereof, the issues therein were by the court decided in favor of the said defendants, and said bill of complaint was dismissed.

This defendant, further answering, says that after the reversal by the supreme court of Illinois of the judgment of the circuit court of Cook county aforesaid, and after the expiration of two years from the date of the judgment of reversal in said supreme court, and, as this defendant remembers, during the year 1877, the said Thomas Brown and Henry G. Tucker, survivors of said Chauncey Tucker, instituted in this court, upon the common law side thereof, a new action of covenant against the said Amos G. Throop, Robert McClelland, and James Mullins, as survivors of said Martin O. Walker and Guy H. Clutting, upon the lease and agreement of July, A. D. 1865, aforesaid, in which action the said Amos G. Throop [and] Robert McClelland only were served with process of summons, and which is the same action in which the judgment aforesaid of ninety-two thousand one hundred and seventy-one
203 dollars ($92,171.09) in the said supplemental bill and hereinbefore referred to was recovered.

This defendant, further answering, says that in all the litigations aforesaid growing out of the said lease and agreement of July, A. D. 1865, he represented, as attorney and solicitor, the defendants actually in court and took part in the trials and hearings therein.

That this defendant did not represent nor was he ever requested to represent the estate of said Martin O. Walker or the administrator of his estate or the said complainant, nor was any effort made by the representatives of said Walker's estate nor by the said complainant, so far as this defendant is advised, to become parties to or render assistance in any of the litigations aforesaid, arising subsequently to and pending at the time of the death of said Walker.

Although the representatives of said Walker's estate and the said complainant as this defendant is informed and believes, were fully

advised of the pendency of said litigation, and especially as appears by said supplemental bill of the pendency of the action at law aforesaid, in which the judgment aforesaid was rendered by the pleadings in this cause long prior to the rendition of said judgment.

This defendant, further answering, upon information and
204 belief, says that at a sale of the real estate belonging to the estate of said Martin O. Walker, had and held in pursuance of the order of the probate court of Cook county, Illinois, and of the law in such cases made and provided, the said defendant, George C. Rand, became the purchaser of the premises in controversy in this case and in which the said complainant claims dower rights as the widow of said Martin O. Walker.

That a deed of said premises was made in due form by said administrators to said Rand, in pursuance of said sale and the order of said probate court, which conveyed to the said Rand the title to said premises, subject to the said deed of trust to said Charles E. Brown hereinbefore referred to.

This defendant, further answering upon information and belief, says that the said sale and conveyance to said defendant Rand were made subsequently to the commencement of the said action in this court by said Brown and Tucker against said Throop, McClelland, and Mullins, as survivors of said Walker and Cutting, and with full notice to said purchaser and all parties associated with him, of the pendency of said suit; that this defendant was the attorney of and represented in said action only the parties served with process therein, to wit, the said Amos G. Throop and Robert McClelland,
who were and are the same parties holding the agreement of
205 indemnity of said Martin O. Walker against any claims or demands under the said lease and agreement of July, A. D. 1865, hereinbefore referred to.

That in behalf of his said clients he at all times insisted and claimed that whatever liability there might be under the terms and provisions of the said lease and agreement of July, 1865, on the part of said Martin O. Walker and his associates therein was, and should be, first chargeable upon the property described in the trust deed to said Charles E. Brown, and the said Brown and Tucker, and their solicitors and attorneys, and the representatives and attorneys of the estate of said Martin O. Walker were by this defendant understood to concur in such opinion of this defendant.

And this defendant expressly charges that, as between the said Throop and McClelland and the said Martin O. Walker and his estate, the latter was by the agreement of indemnity aforesaid, executed by the said Walker in his lifetime, bound to adjust and settle any and all claims and damages arising under or growing out of the said lease and agreement of July, A. D. 1865.

This defendant, further answering, says that in or about the month of May, A. D. 1875, negotiations for the settlement of the matters in controversy under the said lease and agreement were in progress
between the said Brown and Tucker on the one side, and
206 the estate of said Martin O. Walker, and it seemed to be understood that the liability of said Walker's estate, under the

said lease and agreement, should be compromised and settled at the sum of fifty thousand dollars, and that the sum of twenty-five thousand dollars, then in the hands of said James Williams, belonging to said Carbon Hill Coal and Mining Company, should be paid over to said Brown and Tucker, on account of said fifty thousand dollars, and that the said deed of trust to said Charles E. Brown should stand as security for the remaining twenty-five thousand dollars, with interest thereon until paid; and in order to enable this defendant to carry into effect said supposed agreement of compromise, the said James Williams placed in the hands of this defendant the said sum of twenty-five thousand dollars.

That this defendant, in company with Edward A. Small, Esq., the attorney of said Walker's estate, went to the office of the attorney of said Brown & Tucker, this defendant, having in his possession the said twenty-five thousand dollars to pay over upon the completion of said settlement.

That, much to the surprise of said Small and this defendant, they were immediately advised that the said Thomas Brown, who
207 claimed to be the principal, if not the sole, party in interest under said lease and agreement, utterly refused to carry out or sanction the proposed compromise, and the same thereupon wholly failed, and all negotiations for compromise were abandoned, and it was then agreed between said Mullens and the representatives of said Walker's estate that the said sum of twenty-five thousand dollars should remain in the hands of this defendant and be invested in the bonds of Cook county, Illinois, said bonds to be deposited with the Merchants' Savings, Loan, and Trust Company of Chicago, subject to the order of the said Edward A. Small, Esq., and this defendant or the survivors of them to be used in the extinguishment of whatever liability might be established under the lease and agreement of July, 1865, aforesaid.

That said money was afterwards invested in Cook county bonds by this defendant, and said bonds deposited by him in accordance with the agreement aforesaid.

That portions of said bonds afterwards became due and were paid, and the proceeds reinvested in other bonds, with the consent and concurrence of the parties in interest.

And this defendant further states that he has never at any time held any moneys or securities other than those above men-
208 tioned applicable to the payment of claims or damages under the said lease and agreement of July, 1865.

This defendant, further answering, states it to be true that the said defendant, George C. Rand, as the purchaser of the property in controversy, and those representing him at all times after his said purchase, acknowledged the lien of the said trust deed to said Charles E. Brown thereon for whatever sum might be properly claimed or recovered by said Brown and Tucker under the said lease and agreement referred to and described therein. And that the said premises were primarily liable therefor less the amount of the securities in the hands of this defendant and said Small applicable thereto, but the amount of such liability could not be deter-

mined, except by an agreement of the parties or a judgment of the court in an action either brought or to be brought for that purpose.

That no such agreement was arrived at, so far as this defendant knows or is informed, nor was any special effort made to determine the amount of such liability by the judgment of a court, until early in the fall of 1881, when this defendant was informed by the attorney of Brown and Tucker that the suit then pending in this court as aforesaid against said Throop and McClelland, who were
209 the clients of this defendant, would be pressed for trial; that said Throop and McClelland were unwilling to incur the expense of a trial of said cause, deeming themselves fully protected by the deed of trust aforesaid.

That no offer of assistance in said trial was made to this defendant, or so far as this defendant knows, to said Throop and McClelland, or either of them, by the said Rand, or any party representing him, or by the said complainant, or any person acting for her, although said parties, as defendant believes, must have known and did know of the pendency of said suit.

That this defendant, therefore, acting solely for the interest and protection of his client, and in order to save to them the expense and the possible results of a trial of said cause, endeavored to and did effect an arrangement with the said Brown and Tucker by which it was stipulated and agreed on the part of said Brown and Tucker that the judgment recovered in said case should not be enforced against the said Throop and McClelland, or either of them, or against their property, or the property of either of them, and that upon request their property, and the property of each of them, should be released from the lien and operation of such judgment.

That thereupon, and with the knowledge and acquiescence of said Rand and those representing him, the said Edward A. Small,
210 Esq., their attorney, being then in court, this defendant representing said Throop and McClelland, and Wm. C. Goudy representing the said Brown and Tucker, submitted said cause to this honorable court for trial upon the record made on the trial aforesaid in the circuit court of Cook county, Illinois, the said plaintiffs waiving any and all claims for damages therein except for royalty on the coal actually taken from the coal mines and disposed of by said Carbon Hill Coal and Mining Company at the rate stipulated in the said lease and agreement of July, 1865.

That said royalty, with interest thereon, amounted to the said sum of $92,171.00; and for that amount this honorable court, with full knowledge of the situation and of the case on the 8th day of October, A. D. 1881, rendered the judgment which is complained of in said supplemental bill as fraudulent, collusive, and invalid.

This defendant, further answering, says that he is not aware that, in any of the proceedings relating to the said matters above and in the said supplemental bill referred to, he has been guilty of any collusion, confederacy, conspiracy, or fraud, as charged in said supplemental bill, or otherwise; and, after a very careful review of his relations to said matters and his participation therein, this de-

211 fendant utterly fails to see any cause for the charges of collusion, conspiracy, and fraud made against him in said supplemental bill.

That this defendant was not, at any time, the attorney of said Rand, or of the estate of said Martin O. Walker, or of the said complainant, nor had he ever, in any way, management of or responsibility for the interests of said parties, or any or either of them, nor did he ever undertake to represent them, or either of them.

That in all he did relating to the rendition of said judgment he represented only the said Throop and McClelland, and so the parties concerned fully understood.

This defendant therefore explicitly *desires* the charges in said supplemental bill contained of fraud, collusion, and conspiracy on his part with any person, or persons, and submits to the court for its judgment that the said charges are utterly and absolutely false, unprofessional in the party making the same, even by way of pleading.

That the same were wantonly and maliciously made without even plausible excuse or justifications, and were wholly unnecessary to the fair statement and presentation of the rights and claims of the said complainant.

This defendant, further answering, says that he has no knowledge or information of any agreement or understanding between the said Brown and Tucker and the said Rand, or the party or parties
212 representing him, in respect to the settlement or use to be made of said judgment, and whether any such agreement or understanding exists in fact this defendant does not know and is not informed, except as matters of inference, from the fact that the rendition of said judgment was acquiesced in by said defendant Doane, who was understood to be the representative of the defendant Rand and his attorney.

And if there was any such agreement or understanding this defendant has no knowledge or information of the terms or provisions thereof, and was never in any manner advised in relation thereto.

This defendant, further answering upon information and belief, denies that the claims of said Brown and Tucker under the said lease and agreement of July, 1865, were ever settled, adjusted, or released, or in any manner discharged prior to the rendition of said judgment, or that the same were in any manner or to any extent cancelled or extinguished, except as to the sum of $2,500.00 paid thereon prior to the transfer of their interest under said lease and agreement by said Throop and McClelland to said Martin O. Walker, as hereinabove stated; that although this defendant has been connected as attorney and solicitor for the defendants
213 therein, with all the litigation, so far as he is advised, growing out of the said lease and agreement of July, 1865, he has never been informed that said Carbon Hill Coal and Mining Company, or any of the members of said company, ever made any other or further payments under said lease and agreement to said Brown and Tucker, or any representative of them, than the said sum of twenty-five hundred dollars; and this payment, as this defendant

always understood, was simply on account of royalty under said lease and agreement.

This defendant, further answering, says that after the rendition of said judgment, and in the month of November, A. D. 1881, he, in connection with the representative of said Edward A. Small, accounted to and with the said Brown and Tucker, represented by their attorney, William C. Goudy, Esq., for the moneys and securities so in the control of this defendant and said Small as aforesaid, and delivered to said Goudy, as the attorney of said Brown & Tucker, all of said moneys and securities, less certain charges and expenses agreed upon as proper retained by this defendant for his services, &c., and the sum of five thousand dollars in the bonds of Cook county aforesaid, which were left on deposit, subject to the order of this defendant and William H. Moore, Esq., and to be deliv-

214 ered by them under certain conditions agreed upon between said William C. Goudy, Esq., representing said Brown and Tucker, and J. W. Doane, Esq., representing the title to the premises here in controversy.

That this defendant has no knowledge or information of the terms of said agreement, and said bonds were deposited with the Merchants' Loan and Trust Company of Chicago, subject to the order of this defendant and said Moore, where the same now remains.

This defendant further states that the securities turned over by him and the representative of said Small to said Goudy, as the attorney and representative of said Brown and Tucker, consisted of fifteen bonds of the Pullman Palace Car Company, of one thousand dollars each, and six bonds of Cook county, Illinois, for one thousand dollars each; that the market value of said bonds of Cook county was then considerably above the par value thereof, but how much this defendant is now unable to state.

This defendant supposes that the said bonds, or the proceeds thereof at market value, have been or should be credited upon the judgment aforesaid as part payment thereof; but whether such credit has actually been made or not this defendant does not know and is not informed, but it is undoubtedly true that such credit should be given, and that it can be enforced at the instance of any person or persons interested.

215 This defendant, further answering, says that he has, in the foregoing parts of this his answer, succinctly stated the facts respecting his relations to the matters in controversy in this proceeding according to his present knowledge and best recollection, and he expressly denies any and all manner of combination and confederacy wherewith he is charged in and by said supplemental bill of complaint, without that any matter, cause, or thing in the said supplemental bill of complaint contained and not herein and hereby well and sufficiently answered unto, confessed, and avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All of which said matters and things this defendant is willing to aver, maintain, and prove as this honorable court shall direct, and

hereby prays to be herein dismissed, with his reasonable costs and charges by him in this behalf most wrongfully sustained.

JOHN N. JEWETT.

WALTER C. LARNED,
Solicitor for John N. Jewett.

Endorsed: Filed Mar. 5, 1883. Wm. H. Bradley, clerk.

[Folio 216 missing.]

217 On the same day, to wit, on the fifth day of March, 1883, came Martha A. Walker, by her solicitors, and filed in said clerk's office her replication to the answers of George C. Rand *et al.* in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

The replication of Martha A. Walker, complainant, to the answers of George C. Rand, John W. Doane, Augustus L. Chetlain, adm'x, Charles Fargo, Edward S. Walker, Samuel O. Walker, and John N. Jewett to amended supplemental bill.

This repliant, saving and reserving to herself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto says that she will aver, maintain, and prove her amended supplemental bill of complaint to be true, certain, and sufficient in
218 the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she has already prayed.

ISHAM, LINCOLN,
BURRY & RYERSON,
Solicitors for Complainant.

Endorsed: Filed this fifth day of March, A. D. 1883. W. H. Bradley, clerk.

219 Afterwards, to wit, on the tenth day of March, in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

It appearing to the court that George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Henry G. Tucker, Charles E. Brown, and Augustus L. Chetlain, administrators, &c., defendants to the cross-bill of Thomas Brown herein, have been served with process or have appeared herein, or have been ruled by order of this court to appear and plead, answer or demur to said cross-bill, and have failed to so plead, answer, or demur, and they being now each three times solemnly called in open court, and no one appearing in their behalf to make any defence, it is ordered that their defaults be entered and that said cross-bill be, and the same is hereby, taken as confessed and true as against each and every of said defendants hereby defaulted.

220 Afterwards, to wit, on the fifth day of April, 1883, came Thomas Brown, by his solicitor, and filed in said clerk's office his replication to the answer of Martha A. Walker in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the United States Circuit Court, Northern District of Illinois. In Chancery.

221 *The Replication of Thomas Brown, Complainant in the Cross-Bill to the Answer of Martha A. Walker to his Cross-Bill.*

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } Bill.

THOMAS BROWN
vs.
MARTHA A. WALKER *et al.* } Cross-bill.

This repliant saving and reserving to himself, now and and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant for replication, thereunto says that he will aver, maintain, and prove his said cross-bill to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this re-

pliant is ready to aver, maintain, and prove as this honorable court shall direct and humbly prays, as in and by his said cross-bill he has already prayed.

222 W. C. GOUDY,
Solicitor for Thomas Brown.

Endorsed: Filed this fifth day of April, A. D. 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the sixth day of April in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs. } In Chancery.
GEORGE C. RAND *et al.*

And now on this day, this cause coming on to be heard upon the motion of Thomas Brown, plaintiff, in the cross-bill herein, for a reference of the cause to a master in chancery of this court, the plaintiff appearing by Isham, Lincoln, Burry, and Ryerson, her solicitors, and the said Thomas Brown appearing by W. C. Goudy, his solicitor, it is ordered by the court that this cause, and all the issues herein, be, and the same are referred to Henry W. Bishop, one of the masters in chancery of this court, to take the proofs and report the same, together with his findings thereon to this court, according to law and the rules of this court.

223 Afterwards, to wit, on the fifteenth day of January, 1884, came George C. Rand and John W. Doane, by their solicitors, and filed in said clerk's office their amended answer in said entitled cause, which said amended answer is in the word- and figures following, to wit:

224 *Amendment to Answers of George C. Rand and John W. Doane Filed by Stipulation.*

United States Circuit Court, Northern District of Illinois.

MARTHA A. WALKER *vs.* GEORGE C. RAND *et al.*

These defendants, further answering, say that since the death of said Martin O. Walker, to wit, on or about the 18th day of September, 1874, in the superior court of said Cook county, James Coombs, Andrew L. Park and Henry M. Coombs, partners as Coombs, Park & Co., filed their petition against Martha Morton Walker, complainant herein, widow, and James Otis Walker and Edward Stowe Walker, sole heirs-at-law of said Martin O. Walker, deceased, and Charles E. Brown, Chauncey Tucker, Henry G. Tucker, Thomas Brown, partners as Tucker, Brown & Co., and others, in and by

which petition said petitioners prayed for a mechanic's lien upon lot nineteen (19), block nine (9), Fort Dearborn Addition to Chicago, aforesaid, otherwise known as number 39 East Randolph street, in Chicago, in said Cook county; that on the 19th day of September, 1874, in the same court, James S. Bassett, Asahel O. Bassett and James E. Beaver, partners as J. S. Bassett & Co., filed their petition against the same parties praying for a mechanic's lien upon
225 said lot nineteen (19).

That on the 10th day of November, 1875, it was ordered by said superior court that the two causes above named be consolidated, as by the records of said court will more fully appear.

That all of the defendants to said causes respectively were duly served with process, and that said court had full jurisdiction of all the parties to said petitions at the time of the entry of the decree hereinafter mentioned. That on the 20th day of November, 1875, said court entered a decree in said consolidated causes, finding, among other things, that it had jurisdiction of the parties thereto and subject-matter thereof, respectively, and that said complainants, Coombs, Park & Co., had a mechanic's lien upon said premises for materials furnished said Martin O. Walker in his lifetime and used in the construction of said building No. 39 Randolph street, Chicago; and said court further found that said J. S. Bassett & Co. had a mechanic's lien upon said premises for materials furnished said Martin O. Walker in his lifetime and used in the construction of said building; and it was in and by said decree ordered that payment of the respective sums of money in said decree found to be due, with interest thereon, be made to said respective petitioners on or before February 1st, 1876; and, in case of default in such payments, that one of the masters in chancery of said court sell
226 said premises last above named at public auction to the highest bidder for cash "discharged from all claims," upon giving public notice of the time, place, and terms of said sale, as the law requires in the case of sheriffs' sales of land on execution, and execute to the purchaser at such sale a certificate of purchase for the premises sold, free and discharged of all claim of said Tucker, Brown & Co., or any or either of them, of said Martha A. Walker, and of any person or persons whomsoever.

That on the 22nd day of March, 1876, said master in chancery, pursuant to said decree, sold said premises, and issued and delivered to said James S. Bassett and John H. Hammond a certificate of sale thereof, and on the 26th day of June, 1877, said master executed and delivered to Edward A. Small, the assignee of said certificate, a deed in due form of the premises last aforesaid, which deed was duly recorded on the 18th day of October, 1877, in said county.

These defendants, further answering, say that by deed dated the 19th day of October, 1878, and recorded on the 2nd day of November, 1878, said Edward A. Small and his wife conveyed all their right, title, and interest in and to said premises to said George C. Rand, who now holds the fee-simple title thereof free and clear from all claims and demands of said Tucker, Brown & Co., said Martha

A. Walker, Samuel Otis Walker, Edward S. Walker, and all other persons whomsoever.

227 W. H. AND J. H. MOORE.
Sol'rs for Def'ts.
RAND AND DOANE.

(Endorsed:) Filed Jan'y 15, 1884. Wm. H. Bradley, clerk.

228 Afterwards, to wit, on the twenty-fifth day of January, 1884, in the December term of said court, 1883, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.*, } In Chancery.

And now comes said complainant, by her solicitors, and moves for leave to file an amendment to her answer to the cross-bill of Thomas Brown, filed herein, and shows due notice of such motion, and files said notice and proposed amendment, and the court orders that said motion stand for consideration on the final hearing of this cause; and also come the defendants, George C. Rand and John W. Doane, and move the court that the amendments to their answer, already filed by stipulation, as claimed by said Rand and Doane, may stand as amendments to their answers the same as if an order of court had been obtained, and the court orders that said motion stand until the final hearing.

229 Afterwards, to wit, on the twenty-third day of May, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause before Hon. John M. Harlan, one of the justices of the supreme court, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause is now set for hearing upon the pleadings and proofs, and after hearing the arguments of counsel in part it is ordered by the court that further hearing herein be postponed until to-morrow morning.

Afterwards, to wit, on the twenty-fourth day of May, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause before Hon. John M. Harlan, one of the justices of the supreme court, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

230 Now again come the parties, by their solicitors, and this cause comes on again to be heard pursuant to the order of postponement entered herein yesterday, and, after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises takes time to consider.

Afterwards, to wit, on the eighth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. John M. Harlan, one of the justices of the supreme court, is the following entry, to wit:

Decree.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

Now come the parties, by their solicitors, and the court, having considered the motion of the complainant heretofore submitted herein to remand this cause to the State court, sustains the same. It is thereupon ordered that said cause be, and the same is hereby, remanded to the superior court of Cook county, Illinois, whence it came.

231 *Testimony of John W. Doane.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

M. A. WALKER, Complainant,
vs.
GEORGE C. RAND, *et als.*, Defendant. } General No. 17806.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 19th day of June, A. D. 1883.

Present: Mr. Burry, for complainant; Mr. Moore, for defendants, G. C. Rand and others; Mr. Goudy, for defendants C. E. Brown, T. Brown, and Henry G. Tucker.

JOHN W. DOANE, a witness on behalf of the complainant, being first duly sworn, was examined-in-chief by Mr. BURRY, and deposes and says as follows:

It is agreed by counsel that the testimony taken this day may be used with the same effect as if taken within the ninety days allowed for proof by order of the court.

Q. State your name.
A. John W. Doane.
232 Q. Are you one of the defendants in this cause?

A. Yes, sir.

Q. You know the property at the northwest corner of Randolph street, in which Mrs. Walker claims dower in this case?

A. Perfectly well.

Q. How much is the front on Wabash ave?

A. 169½ feet.

Q. How deep?

A. The corner I occupy at the present time is 138 feet on Randolph street.

Q. You have occupied that with a large building?

A. Yes, sir.

Q. How long is it since you first took possession of it?

A. Four or five years next November.

Q. The administrator of the estate of M. O. Walker sold this land in the fall, in the last days of October, 1878, and a deed was made about the first of November. Have you been in possession since then?

A. Since then.

Q. Do you know in whom the title stands?

A. Yes, sir.

Q. Who?

A. George C. Rand.

Q. Do you know George C. Rand personally?

A. Personally.

233 Q. Have you any business relations with him just now?

A. Yes, sir.

Q. Is he a member of your firm?

A. He is not a member of my firm, but I am a member of his firm.

Q. In New York?

A. In New York.

Q. Do you have any interest in the title to that land?

A. Not legally, I suppose, but I do really.

Q. You own the land, do you?

A. Yes, sir; virtually.

Q. When did you first become interested in this land; at the time of the administrator's sale?

A. Yes, sir.

Q. How long before that had your attention been called to it as a piece of property to be sold or disposed of?

A. My attention had been called to it several times.

Q. By whom principally?

A. It was called to my attention by Mr. Fargo and Mr. Small, and a gentleman, I think Mr. Small, had spoken to me on the subject.

Q. You owned the piece of property on Wabash ave., immediately north of this, do you not?

A. No, sir; I don't own it.

Q. You did own it at the time this was bought?

234 A. No, sir, never owned it; I have a leasehold interest in it.

Q. You own the building?

A. I own the building.

Q. How much front of it is on Wabash ave.?
A. It is the same sized lot on Wabash ave., but not as deep.
Q. How deed is it?
A. 115 feet.
Q. Do you know the firm of Tucker, Brown & Co., or any member of it?
A. Only by reputation; I never met any of the firm personally.
Q. Do you know who represents them as attorney in this city in connection with this matter?
A. I do.
Q. Who?
A. Mr. Goudy or his firm.
Q. Before the land was sold by the administrator had your attention been directed to a claim Tucker, Brown & Company had against the property?
A. Yes, sir.
Q. By whom?
A. I think by the same parties that called my attention to the property—Mr. Fargo and Mr. Small.
Q. Did they tell you how much it was for?
A. They told me what the judgment had been entered up at.
235 Q. Was it Mr. Fargo or Mr. Small that you had the principal conversation with, or both?
A. I had a good deal with both, but I should say principally with Mr. Small.
Q. Who paid for the lot at the time it was sold by the administrators?
A. Those lots were paid for virtually before the sale.
Q. How long before?
A. At different times before. The claims against the estate were purchased from time to time.
Q. Do you know by whom they were purchased?
A. I furnished the money.
Q. They were practically all purchased up?
A. Practically all; I think every one.
Q. That was before the sale?
A. That was before the sale.
Q. To whom did you hand the money to buy up these claims?
A. I handed the money to Small and Moore.
Q. For whom?
A. For myself.
Q. To whom was the money to be given?
A. It was to be used in the purchase of those claims against the estate.
Q. For whose use or for whose benefit were those claims to be so purchased?
A. For the perfection of the title.
236 For whose benefit; who was to own the claims after they were purchased?
A. I should, I suppose.
Q. Did you understand they were to be taken in your name?

A. I didn't understand; never knew they were; no understanding about that.

Q. Did you understand they were to be taken in the name of Samuel O. Walker?

A. No, sir.

Q. Did you understand they were to be taken in the name of some person named by him?

A. I think they were to be taken in the name of some person, I suppose, in the office of Small & Moore, but I didn't know whose name they were taken in.

Q. Do you know Mrs. Kennicott?

A. No, sir.

Q. Do you know whether or not as a matter of fact almost all the claims against the estate of Martin O. Walker were bought up and placed to the name of Mrs. Kennicott?

A. I could not say that.

Q. Do you know how long before the sale it was these purchases of the claims was consumated?

A. Those claims were a good while being bought and paid for; I suppose six months at least.

237 Q. What part was the administrator to have in the buying up or settling of those claims?

A. I don't know.

Q. Did you know Mr. Chetlain in connection with it?

A. No, sir.

Q. How much money did you so advance from time to time to purchase up these claims?

A. I could not be quite sure, but I think it was thirty or forty thousand dollars.

Q. Do you know how much it cost to buy up the claims?

A. I do not.

Q. Have you ever been told they were all bought up for $20,000.

A. No, sir.

Q. Ever been told you paid nearly double what they were bought up for?

A. Never.

Q. Did you have no part in that transaction?

A. I furnished the money.

Q. That is all?

A. That is all.

Q. Did you understand these claims were to be satisfied on the records or held for some use?

A. I understood they were to be satisfied in full by record

238 or otherwise.

Q. Have you ever been informed whether they are or not?

A. I think I was informed at the time they were.

Q. Do you not know after the administrator's sale a dividend was declared by the administrator of about 18 per cent. on all the claims and that was paid over, and the claims are still valid for the balance?

A. I don't know about that.

Q. Do you not know there are several creditors' suits pending on some of the claims seeking to investigate some of the transactions?

A. I don't know of any.

Q. Did you buy or advance money to settle those claims for the purpose of perfecting the title to this Wabash and Randolph street property alone?

A. It was with that view.

Q. Was there any other property intended to perfect the title to thereby?

A. I understood it would cover all the property.

Q. What other property did you purchase or become interested in at that sale?

A. I don't know whether it was at that or some other sale I became interested and owner of the homestead.

Q. Any other?

A. No other.

239 Are you in any way interested in 79 and 81 Randolph street?

A. No.

Q. Are you in any way interested in the three lots immediately west of this property in controversy?

A. Not at all.

Q. Have you at any time had any interest in them?

A. Not at all.

Q. You understood, did you not, after those claims were settled, the property would be held by a lien in favor of Tucker, Brown & Company?

A. I knew there was such a lien or suit.

Q. Did not Fargo tell you it was a pretty serious claim?

A. No; he didn't tell me it was very serious, but still it was a lien—a cloud.

Q. *Do* you remember how much that property was sold for at the administrator's sale, do you not?

A. I think it was told at the time.

Q. $5,000, was it not?

A. A nominal sum.

Q. Why did it go for a mere nominal sum?

A. If I understood it, it was of no consequence what it did sell for; if it sold for a large sum it would come to the parties that owned the claims.

Q. That is, it was all arranged beforehand.

240 A. You can call it what you have a mind to.

Q. How did it happen you agreed to advance the money to buy out claims against the bankrupt estate where you were not sure you would get the property at the sale?

A. I think I was pretty sure of getting the property or the value at the sale which would be ample to repay the dividend that had been advanced.

Q. In other words, you advanced so much money to clear up the claims, and you were going to get the property to pay it back?

A. Yes, sir.

Q. And the expressed consideration would not make much difference?

A. That did not make any difference as I understood the matter.

Q. When you advanced this money you understood you were to get it back in cash or in the property—is that it?

A. I knew by advancing the money we would become the owners of these claims; what the result might be we did not know?

Q. But you would get your money back or the property?

A. Get the money back or the property.

Q. Did you have conversation with Mr. Chetlain in regard to this transaction?

241 A. I don't think I ever mentioned the matter to him or he to me.

Q. Did Mr. Fargo give any reason why this claim of Tucker, Brown & Company was not a serious one?

A. I could not remember the reason that he gave.

Q. Do you remember any of them?

A. He said it was in the courts and a doubtful claim.

Q. Did he say anything about its being in process of adjustment?

A. I don't remember.

Q. Can't *you* remember anything about that?

A. I don't remember he ever said that.

Q. Did he say anything in that line?

A. I don't remember.

Q. Did he ever mention a figure at which it could be settled?

A. I don't know whether he did or whether it came by Mr. Small. I have heard several amounts it might be settled for.

Q. What were the amounts you heard at different times?

A. I heard it could have been settled for fifty or sixty thousand dollars. I don't know but Mr. Goudy may have told me that.

Q. How long ago was that; about the time of the purchase?

A. My conversation with Fargo was some time previous.

242 Q. This conversation with Mr. Goudy at which he told you that?

A. That was since.

Q. Long since?

A. I don't know exactly when.

Q. Has that claim been settled with Tucker, Brown & Company?

A. I don't think so.

Q. Made any arrangement with them?

A. There has been a judgment.

Q. Have you made any arrangements with them?

A. With Tucker, Brown & Company?

Q. Yes, or their representatives.

A. Yes, sir.

Q. What were they?

A. I don't know as I could relate the terms.

Q. Give it as near as you can.

Objection on the part of Thomas Brown to the witness stating any arrangement made between himself and Thomas Brown, or any per-

son representing him, because the testimony is immaterial and irrelevant.

Q. State the terms, as near as you can.

A. There was a judgment obtained on the property, which was a very great surprise to me at the time, and when I heard of it

243 I went round to see Mr. Jewell, who, I understood, was managing the matter. After that I met the attorney of Tucker, Brown & Company. I wanted Mr. Jewett, in the first place, to have this judgment set aside that had been rendered, and it was then too late.

Q. What did Mr. Jewett say about setting it aside?

Mr. Goudy objects to the conversation and statements *or* Mr Jewett.

Mr. Goudy does not appear as the solicitor for Mr. Jewett, but Mr. Jewett being absent from the city at his request Mr. Goudy represents him at this examination.

Objection sustained. Exception by Mr. Burry.

Q. Why were you surprised to hear of the judgment?

Objected to by Mr. Goudy, because it is simply calling for reason resting in the mind of the witness. Objection overruled.

A. I was surprised, because I did not suppose any such judgment was going to be entered.

Q. Did you understand there was an arrangement made for the settlement of the claim?

A. No, sir.

Q. Why did you not anticipate a judgment, if the claim was not settled?

244 A. Because I supposed I would be advised of it, and have a chance to hear something about it, and that the attorneys would have notified me.

Q. After you had seen Mr. Jewett, what were the next steps taken towards the arrangements with the representatives of Tucker, Brown & Company?

A. The next step was the conversation with the attorney.

Q. Of whom?

A. Tucker, Brown & Company.

Q. What was it?

A. It was a conversation that took place in Mr. Jewett's office with Mr. Goudy present. I stated that I had been surprised by this judgment, and wanted steps taken to set it aside.

Q. I want the story right up to the settlement.

Mr. GOUDY: I object to the witness stating any conversation he had with me.

Q. Was Mr. Goudy your attorney?

A. No, sir.

Q. State all the conversation that occurred looking towards a settlement.

Objected to as before. Objection sustained. Exception by Mr. Burry.

245 Q. Was any written agreement come to about what was to be done about this agreement?

A. Yes, sir.

Q. Have you a copy of it?

A. Not with me; I have it in my vault.

Q. Will you produce it here?

A. I can. (Mr. Goudy produces a copy of the agreement.)

Q. Do you produce here and attach to your deposition as an exhibit a copy of the agreement dated October 8, 1881, and accepted and ratified by Thomas Brown, by W. C. Goudy, attorney, November 7, 1881, entered into between you and Mr. Thomas Brown as to the disposition of that judgment?

A. I can.

Q. Was Mr. Jewett present when this contract was completed?

A. He was not.

Q. Who was present when you signed it?

A. I don't know; I don't remember.

Q. Did you see Mr. Goudy sign it?

A. I don't think I saw him sign it.

Q. Did Mr. Jewett see this matter after it was drafted or written out?

A. He never saw it that I know of.

Q. Does this substantially conform to the arrangement made when Mr. Jewett was present between you and the other parties?

246 Mr. GOUDY: He has said any arrangement was made when Mr. Jewett was present.

A. Mr. Jewett had nothing whatever to do with the contract.

Q. Ever show it to Mr. Jewett?

A. No, sir.

Q. Do you know of Mr. Jewett having seen it?

A. Not to my knowledge.

Q. Have you ever paid any money to Thomas Brown on account of their claim against this property?

A. No, sir.

Q. Have you ever received any money from him?

A. No.

Q. This $5,000 mentioned in here as deposited with Mr. Jewett still remains with Mr. Jewett, so far as you know?

A. I think it is in his hands and in the hands of Mr. Moore, and remains as it was in the first place.

Q. Any proceedings taken by you or Brown against what is known here as the three Sears lots?

A. I have not taken any steps.

Q. Do you know of any proceedings having been taken?

A. I don't know whether any proceedings have been taken or not.

Q. Do you know whether that claim is settled or not?

247 A. I understand it is settled.

Q. Do you know how it was settled?

A. I don't know how, and I don't know — it was done by proceedings. I understand the Boston people have a perfect title to the property, and are trying to sell it.

Q. Did you understand at the time of the agreement you had some claim on those three lots?

A. No, sir.

Q. Did you understand at that time Tucker, Brown & Company had some claim on those three lots?

A. I was given an option, as you perceive, by the agreement.

Q. Have you ever exercised that option?

A. That option has been sold. I sold it.

Q. To whom has it been sold?

A. To Tucker, Brown & Company.

[Q.] For how much?

A. $2,000.

Q. Have you received $2,000 from Tucker, Brown & Company?

A. On these three lots west of the property? When you asked the question before I thought you meant——

Q. Where did the $2,000 come from?

A. I got Lyman & Jackson's check for it.

Q. Any endorsement on it?

A. I don't remember.

248 Q. The check of Lyman & Jackson made directly to yourself?

A. I think it was.

Q. Didn't pass through Mr. Goudy's hands?

A. I don't think it did. I would not be sure about that.

Q. Has this $8,000 been satisfied in any way.

A. I suppose it was satisfied at the same time. I don't know about that.

Q. Who received the $8,000?

A. I suppose Tucker, Brown & Company. I don't know.

Q. Who paid the $2,000?

A. Mr. Moore handed me the check of Lyman & Jackson's.

Q. You don't understand; Lyman and Jackson paid you out of their own funds, but as agent for whom?

A. As agent for the owners of the property.

Q. The Sears estate.

A. Yes, sir.

Q. Do you know if the Sears estate has paid Tucker, Brown & Co.?

A. I don't know. I understood they had.

Q. Has their agent told you?

A. No, sir.

Q. Mr. Goudy?

A. No, sir; had no conversation with him on the subject.

Q. You don't know whether Tucker, Brown & Company

249 have received the $8,000 on account of the mortgage or not?

A. I have been told so; I don't know.

Q. You know the whole affair has been settled?

A. That is what I understand—that it has been settled up, and the owners are trying to sell the property and give a good title, which they could never do before.

Q. This agreement provides that in case Mrs. Walker maintains a successful defence against this law suit Tucker, Brown & Company's judgment is not to be enforced against yu. It moreover provides that you are to pay Tucker, Brown & Company $20,000 if they can cut her off for your benefit. Do you understand that you are merely to pay them $20,000 for beating her dower claim for you?

Objected to by Mr. Goudy and Mr. Moore. Objection sustained. Exception by M. Burry.

Q. The contract in the first clause provides that the foreclosure proceeding is to be conducted at the expense of said Doane, the endorsement signed by Thomas Brown & Company, provides
250 that Brown agrees to carry out the terms of the contract without any expense to said Doane. Which of these two conflicting provisions has been followed?

Objected to by Mr. Goudy. Objection sustained.

Q. Who is paying the expenses of the foreclosure case?

A. I have not paid any expenses.

Q. The contract states: "Said provisions, however, to be conducted at the expense of said Doane."

A. The last part of the contract is different.

Q. You say you are not paying any of the expenses of the foreclosure case?

A. None whatever; I understand that to be a part of the contract.

Q. Has anything been done by any person with a view of abrogating this contract?

A. Not to my knowledge.

Q. Any new contract been entered into in relation to it?

A. Not that I remember.

Q. Its terms extended in any way?

A. Not to my knowledge.

Q. Do you know why a thousand dollars was reserved for Millins?

A. I do not.

Q. Did you hear any conversation by any parties to the suit as to why it was reserved?

251 A. I heard, more or less, about Mr. Mullins, but the position he occupies in the matter I could not undertake to describe; I don't know enough about it.

Q. Do you know Mr. Mullin?

A. I never saw him.

Q. When you advanced the money to buy the claims of this estate long prior to the administrator's sale, with the understanding that at the sale you were to get back the money, or buy in the land, did you

understand you were merely making a loan to the estate at that time of that money?

A. I understood it was a safe thing to do; that these claims were to be transferred to some one in our interest as trustee.

Q. You understood it was a safe investment of money, as you were sure of getting back your money, with good interest, and perhaps the property?

A. It was considered a prudent thing for me to do, or I should not have done it.

Q. Did you understand you were assuming the position of mortgagee to the estate?

A. No.

Q. Did you do anything towards the negotiation of quit-claim deeds from the heirs of the estate, or their representatives, to you?

252 A. Not personally.

Q. You received such quit-claim deeds, did you not?

A. I never had the deeds in my possession.

Q. Never have received them?

A. No, sir; I think they are held for Mr. Rand.

Q. Who holds them for him?

A. I think Mr. Moore.

Q. Since your connection with this estate, Small & Moore, or Mr. Moore, have been your legal advisers in all your dealings with it, have they not?

A. Yes.

Q. Prior to the obtaining of this contract did you ever make any proposition to Tucker, Brown & Company of a definite sum for a full release?

Objected to by Mr. Goudy. Objection overruled.

A. I don't remember that I ever did.

Q. Did you ever receive from them a proposition as to what they would take for a release of the claim in full?

A. I am not sure about that; I don't remember of it, but I would not be positive about that.

Q. You did not mean to express by $85,000 consideration anything like the actual value of the lot, did you?

A. I knew very well that the lot was worth more if it was free from incumbrances.

253 Q. How much did you consider it worth at that time?

A. I was looking this morning at my testimony at that time, which I think would be as good an answer as I could make to that question. It was $500 a foot in Wabash; about seventy-five or eighty thousand dollars.

Q. About $85,000?

A. Somewhere about that.

Q. Do you remember testifying before in that same case about the value of the land?

A. Yes.

Q. What did you then put it at?

A. If I remember rightly it was entirely on a different basis. I was asked to give the value of the whole property.

Q. Including the three other lots?

A. I think so.

Q. Did you have any other purpose than that expressed on the face of the contract in entering into this arrangement with Tucker, Brown & Company and their representatives, as to the foreclosure of their claim on the property?

A. Nothing more than what is stated in the contract.

Q. Any contingencies to arise other than those stated in this contract, on which any money was to be paid by you to Tucker, Brown & Co?

A. No others that I remember of.

254 Q. Any other contingencies to arise than those stated in this contract, on which you were not to pay any more money to Tucker, Brown & Co.?

A. No, sir.

Q. Were the contingencies expressed in the contract; the only ones under which the $5,000 was to be refunded to you?

A. Only under the terms of the contract.

Q. Didn't you have the purpose in making this contract, of defeating the right of Mrs. Walker to dower in these premises?

Objected to by Mr. Moore.

A. I am very glad of having an opportunity of saying I never have, from the start, undertaken to defeat any dower interest that Mrs. Walker had in the property that I have an interest in. On the contrary I went to your office at one time for the special purpose of trying to settle and have it out of the way. This and other arrangements I entered into to get the matter settled. I would like Mrs Walker to have all the interest she is entitled to.

Q. Have you ever offered to set out to her this property by metes and bounds—one-third of the land.

A. No, sir; never had that proposed to me.

Q. You have not.

255 A. Never.

Q. In all this litigation hasn't she insisted on it?

A. Never. I don't know what might have been in court; I never read any of the papers.

Q. Ever see any person in reference to the matter?

A. Yes; I saw Mr. Isham, and he promised me he would telephone me and settle the matter; that is before I took hold of the property.

Q. Are you willing now to set out to her one-third of the land as her dower?

A. No, sir.

Q. She paying the interest and one-third of the expenses?

A. No, sir; I should not be willing to do it. I don't think I would be willing to do it at any time. I would not have bought two-thirds of the property at any time.

Q. There are six lots, are there not?

A. Yes; I think so.

Q. You say in entering into this agreement you had no other purpose than what would be fairly inferred from its face?

A. None whatever.

Cross-examination by Mr. MOORE:

Q. You have spoken in regard to these claims you purchased against the estate of Martin O. Walker. Do you know whether all the claims were purchased by you or in your interest?

256 A. I don't think they all were.

Q. Do you know how large a percentage was purchased?

A. I should say two-thirds of the claims; I would not be sure.

Q. Were those claims to be satisfied and cancelled of record and assignments to be made of the claims to you or somebody in your interest?

A. They were to be made to somebody.

Q. Were you to hold the claims as liens against the estate?

A. Virtually so; yes.

Q. Did General Chetlain, administrator, have any interest in these claims that you purchased?

A. Not to my knowledge.

Q. All the money was furnished by you for the purchase of the claims?

A. Yes.

Q. Do you know to whom the claims were assigned?

A. I don't know whether they were all assigned, but principally to S. O. Walker, trustee.

Q. He was one of the heirs?

A. He was the son of M. O. Walker.

Q. I suppose you have never seen the probate court records, to see how they stand there?

A. Never.

Q. Were you present at the administrator's sale?

257 A. I was not.

Q. Somebody, as you understood, bid in the property at $5,000 for Mr. Rand?

A. So I understood it.

Q. He had previously purchased quite a large amount of claims?

A. Yes.

Q. And when the 18 per cent. dividend spoken of by Mr. Burry was declared that was declared on all the claims

Objected to by Mr. Burry.

Q. To whom did the 18 per cent. dividend go?

A. Proportioned to the claims.

Q. Your claims and other claims?

Objected to.

A. Yes.

Q. What other titles did Mr. Rand purchase then at the administrator's sale?

A. Mr. Rand purchased the mechanics' *lien* title derived in that way to one lot in block 19. He obtained, as I was told, a good title to that lot through mechanics' liens, which he paid for. He also bought tax deeds upon the remaining lot.

Q. Do you know whether those tax deeds covered the mechanics' lien lot?

A. I do not know.

Q. I understood you to say you had no arrangement with Gen. Chetlain, the administrator, about the sale either one way or the other?

258 A. I never saw him in connection with that matter.

Q. Never had any conversation with him?

A. I never saw him.

Q. You have spoken of the value of the lot exclusive of the three lots belonging to the Sears estate, and something has been said about your former testimony. By whom were you called as a witness when that valuation was given?

A. I was called on one occasion by the firm Mr. Burry is associated with.

Q. On the part of Mrs. Walker?

A. I was called by Mr. Isham.

Q. Who did Mr. Isham represent?

A. I suppose the same estate he does now.

Q. M. O. Walker?

A. Yes.

Q. I understood you to say, taking the property as a whole—your testimony was it was worth $1,000 a foot, and less the three lots you considered it worth only $500 a foot. Why did you make that change in your valuation?

A. Because the taking off of those three lots changed the shape of the property so materially that I considered it of that value.

Q. In what respect did it change it?

A. With the three lots on there is a wide alley all the way

259 round; with the three lots off it leaves the corner property unprovided with an alley and facilities to utilize the Wabash Ave. front.

Q. Was the property unimproved at the time you took hold of it?

A. Unimproved.

Q. How long did it remain unimproved?

A. Very shortly after Rand got the title I commenced to improve.

Q. In regard to this valuation of $500 a foot; is that the value as clear property?

A. That is the value if it had been clear property.

Q. Would it make any difference in the value you place on it if it should turn out to have trust deeds, mechanic's liens, taxes, and tax sales on it?

Q. It would change my value of the property entirely, and to the extent of those losses.

Q. Where is this lot 19 situated, with reference these six lots?

A. I should say it was about four lots from the corner, without knowing positively.

Q. This was a mechanic's-lien proceeding against the heirs of Martin O. Walker and Mrs. Walker, as well?

A. I understood it so.

Q. A sale made under that mechanic's-lien proceeding?

260 A. I understood so.

Q. And deed obtained under the sale?

A. I understood so.

Q. This building covers the entire six lots?

A. About one-third of the six lots is not improved, being left open.

Q. The entire front of the six lots on Randolph street and Wabash avenue is covered by buildings?

A. It is.

Q. Do you know how many tax deeds were purchased of Mr. Rand?

A. I should say two or three different ones.

Q. Do you remember, without reference to your books, the amount of tax liens on your property at the time of the sale?

A. I think it was about $23,000.

Q. At the time of the sale to you?

A. At the time of the sale to me.

Q. Which you have paid or taken?

A. I paid about $17,000 of it, and there is some yet unpaid.

Q. Some of these are tax titles?

A. No, sir; it is the tax of 1875 or 1874, which there is some doubt about.

Q. Some of these tax liens are tax titles?

A. These have all been paid up—all the tax titles and liens—so far as I know.

Q. The title stands in Mr. Rand?

A. Yes.

261 Q. These deeds cover the entire six lots?

A. Yes.

Objected to by Mr. Burry as incompetent.

Q. Did you acquire any other property at the administrator's sale than this which went to Mr. Rand?

A. Yes.

Q. That belonging to the Walker estate?

A. The property known as the Ellis avenue property.

Q. You got that at the same sale?

A. At the same sale, I think it was; I am not sure.

Q. This agreement purports to be dated October 8, 1881; the attachment appears to be signed November 7, 1881; that is the date of entering into the agreement?

Objected to.

Q. What was the date of entering into the agreement?

A. It was when we finally agreed to change in the matterof expense, which was on the last date.

Q. November 7, 1881?

A. November 7, 1881.

Q. Was that before or after the judgment was rendered?

A. It was some time after.

Q. About a month?

A. I could not be sure; it was some considerable time.

262 Mr. GOUDY: There was no agreement made or concluded, was there, prior to the time this was signed, bearing date November 7, 1881?

A. None concluded until that time.

Mr. BURRY: You testified that a lot in block 19 was acquired by Mr. Rand under a mechanic's lien of proceedings. Have you an interest in that property?

A. No more than in the whole; the same in all.

Q. That is, you practically own it, but the title is in Rand?

A. Practically.

Q. He holds it for your benefit?

A. Yes.

Q. For whom did S. O. Walker acquire those claims as trustee; for whose benefit?

A. For mine, so far as the money I paid over.

Q. When this property was first bought at administrator's sale, did Rand own it then, beneficially?

A. The same as he does now.

Q. Why was the title taken in his name?

Objected to by Mr. Goudy. Objection sustained. Exception by Mr. Burry.

263 Q. At the time you bought this property you say you were in possession of the same frontage of property on Wabash Ave., immediately north of this, with a depth of 115 feet. What was the leasehold rental that you were then paying for that property?

Objected to.

A. I was then paying $8,000 a year on a lease made five years before that.

Q. You have said there were $23,000 of liens on this property when you bought?

A. As near as I can remember.

Q. I will ask you to produce here as an exhibit to your deposition a list showing every amount that you have paid on account of liens that were upon this property at the time you bought, and showing the date of payment of each of said amounts, to whom paid and on what account.

A. I can do that.

Mr. Burry reserves the right to take the questions which have been ruled upon by the master before the court.

Q. How much did you pay the Walker heirs for quit-claims of this property—the Walker heirs or Mr. Fargo?

A. Nothing, that I know of.

Q. Didn't they get their consideration from the money
264 made out of buying up claims against the estate?

A. I do not know.

Q. Was there ever anything of what you paid for the purchase of *of* those claims paid back to you?

A. Nothing.

Q. If there was anything collected on that somebody else got it?

A. Yes.

Mr. MOORE: You have spoken of the amount you paid for the Birch property; that was made in 1871?

A. In 1871 or '72.

Q. The value upon the property in question you fix in 1877 at $500 a foot?

A. 1878.

Q. Was there any difference in value between 1871 and that time?

A. Over one-half, in my judgment.

Q. Which way?

A. One-half lower seven years later.

Q. Mr. BURRY: You mean the property was worth one-half less, or that there was a depression in the market, at which it could not be sold.

A. I mean the identical property; I would not have taken the Birch property could not have sold it for more than half in 1876 than in 1871.

265 Q. Was it not because there was no sale that the property was really worth the amount?

A. Not in the market.

Q. You mean in the market it was worth that amount?

A. Yes; there was the property of Duvant's nearly opposite.

Q. How large a lot?

A. 90 feet deep.

Mr. MOORE: Was this property offered to any body else besides you; and, if so, how many?

A. I understood it was hawked all round the streets.

Adjourned to 9.30 a. m., June 20th.

266 EXHIBIT A.

Memorandum Agreement Between Thomas Brown and John W. Doane, October 8th, 1881.

Thomas Brown is to foreclose a deed of trust made by Martin O. Walker & wife to Charles E. Brown on certain lots at the corner of Wabash avenue & Randolph street, in the city of Chicago, to secure a judgment therein mentioned, and which had been rendered by the circuit court of the United States for the northern district of

Illinois this day against Amos G. Throop & Robert McClelland, and to obtain a decree against Mrs. Walker to sell the property.

Said proceeding, however, to be conducted at the expense of said Doane.

2d. John W. Doane is to bid off the lots described in said deed, the title of which is now in George C. Rand, for twenty thousand dollars, or to pay that sum for a transfer of the dower right to the owner in fee, and discharge the same of record.

3rd. If Brown fails to procure said decree and sale, or to
267 purchase the right of dower and transfer the same, and discharge the same of record to the owner in fee, so that the owner is required to purchase the dower and discharge the same of record, or so that the dower shall be assigned or assessed then Brown is to pay towards the dower ($5,000) five thousand dollars, & Doane is to pay or meet the balance.

4. In case a sale is made under such decree of foreclosure of those lots, known as the Sears lots, on Randolph street, and the equity of redemption is purchased by Brown is to transfer it to Doane for $8,000 at the option of said Doane to take the same or not. Or Doane may purchase said lots at said sale for that sum without hindrance from Browne.

5. When Browne receives the bonds or securities or funds now held by John N. Jewett (which he shall receive on the delivery of this agreement), and the said sum of twenty thousand dollars, and the said sum of eight thousand dollars, at the option of said Doane as to the eight thousand dollars, the judgment against McClel-
268 land & Throop, is to be entered satisfied, & it is not to be enforced against any other property described in said deed of trust.

6. Said suit for foreclosure is to be commenced and prosecuted by Brown with diligence, and proceedings computed within five years, & if not concluded by that time he is to be considered to have failed as aforesaid, and shall at the end of that time cancel & discharge of record the judgment in the U. S. circuit court, northern district of Illinois, in favor of Brown and against McClelland *et al.*, and the same shall be no longer a lien against any of the property mentioned in said deed of trust, except the Sears property.

7th. On the signing of this memorandum John N. Jewett is to deliver the funds or bonds in his custody (except $1,000 for Mullins) to said Brown, with the exception of $5,000, which he is to retain and hold as security for the payment of the $5,000 herein mentioned if Brown shall be required to pay the same.

This is to be binding upon the heirs, administrators, and assigns of both parties hereto.

THOMAS BROWN.

269 I hereby ratify the above contract, and agree to carry out its terms without any expense to said Doane.

THOMAS BROWN,
By W. C. GOUDY,
His Attorney.

Chicago, Nov. 7, 1881.

270 *Testimony of S. A. Walker.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

M. A. WALKER, Complainant,

vs.

GEORGE C. RAND, JR., *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 20th day of June, A. D. 1883.

Present: Mr. Burry, Mr. Moore, Mr. Goudy.

SAMUEL O. WALKER, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. BURRY, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Samuel O. Walker.

271 Q. You are the son of Martin O. Walker, former husband of the complainant?

A. Yes, sir.

Q. Do you know John W. Doane?

A. I do.

Q. And Mr. Chetlain, the former administrator?

A. I know Gen. Chetlain.

Q. Do you remember about the amount of claims proved up against your father's estate in round numbers?

A. Yes, sir.

Q. What was it?

A. At their face about $190,000; with the interest, would make considerable more than that.

Q. Did you ever taken any part in buying up those claims from the holders of them?

A. I guess I bought them all myself; that is, I bought all that were bought.

Q. In whose name were they taken?

A. In my name, as trustee.

Q. Trustee for whom?

A. Those claims were to be held in trust by me for John W. Doane, as security for a large amount of money which he loaned
272 and advanced me at different times until that money was repaid to Mr. Doane.

Q. Do you know Mrs. Kennicott?

A. Yes, sir; I know a Mrs. Kennicott.

Q. Were the claims held in trust for her?

A. You mean my wife's mother?

Q. I do not know who it is.

A. They were held subsequently for Mrs. Kennicott and the repayment of the money to Doane. I think your question has been answered exactly and responsively. You asked me for whom they were bought and held in trust? They were held in trust for Doane

until the money was repaid to him; subsequently to that I held them in trust for Mr. Kennicott and my wife; I hold them so now.

Q. How long was it before the administrator's sale that the money was advanced to Mr. Doane for the purchase of these claims?

A. Mr. Doane advanced me money for other purposes besides the purchase of the claims, and it was all comprehended in the trust; I don't know — I could tell you exactly how long before.

Q. About six months?

A. I should think in that neighborhood.

273 Q. In round numbers you say you bought up $190,000 — claims?

A. I guess there was $3,500 or $5,000; I never bought; could not buy; I deposited the money in the county treasurer's office. I guess the administrator did that.

Q. How much money did Mr. Doane advance to you altogether on the face of these claims or your interest in the estate?

A. I don't know Mr. Doane advanced me any money on the faith of my interest in the estate.

Q. Then, on the faith of those claims.

A. The transaction between Mr. Doane and myself was such an one as business men had where one man borrows money of another and furnished collateral security for the loan, and the amount of money that Mr. Doane advanced me for various purposes and at different times it would be very difficult for me to tell without refreshing my memory, but from forty to fifty thousand dollars; I guess about $50,000.

Q. About how much did this $190,000 of claims that you bought cost you?

A. They cost me about 22½ cents on the face of them; more money than I could get out of them; I lost money on them.

274 Q. You say, then, your purchased of this $190,000 of claims cost you about $40,000?

A. Yes, sir.

Q. Was there afterwards dividends declared on those claims?

A. After I bought them?

Q. Yes, sir.

A. Yes.

Q. What was the dividend?

A. It was about 18½ per cent. on the face and interest of the claims at the date of the declaration of the dividend.

Q. Did that amount to as much on the average as the 22 per cent. you paid for them?

A. No, sir.

Q. When that dividend was paid, to whom was the money handed over on those claims?

A. I receipted for the dividends on all claims which I bought.

Q. What became of the money; did you give it to Mr. Doane?

A. I repaid Mr. Doane the advance made to me.

Q. In cash?

A. Yes, sir; or its equivalent.

Q. You have testified that the claims cost in the neighborhood of

$40,000, and that the dividend would be in the neighborhood of thirty-seven or thirty-eight thousand dollars; do you mean
275 you paid to Mr. Doane in cash thirty-seven or thirty-eight thousand dollars?

A. I mean to say we paid to Mr. Doane all the advance he made me in a manner that was satisfactory to him.

Q. I ask you if you paid it in cash?

A. Not entirely.

Q. Did you pay any large portion of it in cash?

A. There was some portion paid in cash.

Q. Was $20,000 paid in cash?

A. I could not remember accurately about that now; it is a good while ago. I would be glad to remember these facts exactly if I could. I did not know what I was to be asked about, and had no chance to refresh my memory.

Q. Mr. Doane bought two or three pieces of land at the sale, or became interested in them, did he not?

A. Yes; I think he did.

Q. He bought the homestead property, so called, on Ellis avenue?

A. Yes.

Q. Do you remember what the consideration expressed was?

A. Mr. Doane did not buy the homestead property. Mr. Doane, as a matter of fact, did not buy any property at the sale. To
276 answer the intention of your question rather than the question itself, I will say the property that was afterwards deeded to Doane by myself I bought at the sale, and that is what I meant that in settling with Doane I gave him money or its equivalent.

Q. Then you bought in the homestead property at the sale for the amount expressed in the deed?

A. Yes.

Q. That was $6,700?

A. Yes, subject to taxes also.

Q. You turned that over to Mr. Doane for the money advanced?

A. I turned that over to him.

Q. He also bought the property in controversy here at the corner of Wabash and Randolph street, did he not?

A. I don't think Mr. Doane did, and I did not buy it either.

Q. It appears in the testimony here it was brought in the name of George C. Rand, but for the beneficial interest of Doane.

A. I guess that was the fact.

Q. And the consideration expressed in the deed was 5,000; was that turned over to Doane as part of the money advanced?

A. I am not willing to answer that question that way, because it is not an exact statement of the transaction.

277 Q. State the transaction.

A. As I understand it, George C. Rand, Jr., represented by some one here—I think it was by Mr. Doane—bid for the property at the administrator's sale, and subsequent to that transaction—that is, to the bid in by Mr. Doane for Mr. Rand, I think it was—I was asked by Mr. Doane to make a deed of my interest in that property and

of the interest of my property and some other interests which I represented, and did so make a deed, and the consideration of that deed was a portion of the advances previously made by Mr. Doane to me.

Q. Then in consideration of the advances Mr. Doane made to you he received the homestead property he received of Mr. Rand, the Wabash avenue and Randolph street property, and he received quit-claim deeds from you and your brother to this property, and the balance you say he received in money?

A. In the first place, I did not have anything at all to do with Rand; never saw him, and never had any transaction with him that I know of, unless I might possibly have had transactions with some agents of his. I never remember to
278 have seen Rand at all; in the next place, the real estate which I conveyed to Doane in part settlement of advances made to me was such interest as I had in the homestead property on Ellis Ave., also my interest and the interest I represented in the corner of Randolph street and Wabash Ave., and there was some other property; in fact, it is proper to say all the money I expended in the purchase claims was not advanced by Doane. A portion of that money was loaned me by my uncle, S. B. Walker, with security, and afterwards repaid by me. The money was not entirely advanced by Doane.

Q. Then the S. B. Walker money you paid back in cash?

A. I paid him a portion in cash—the greater portion in cash—and also made him a deed of some property.

Q. In the case of Mr. Doane, you repaid his advances partly in property and quit-claim deeds and partly in cash?

A. Yes.

Q. Did you repay any part of the money advanced by Doane any other way than by these interests in the Walker estate and by cash?

A. No, I don't think I did. I know I did not. It was not
279 the Walker estate property after I bought it and paid for it.

Q. Property that had belonged to the Walker estate?

A. Yes.

Q. Was there any other person than Doane and S. B. Walker who advanced you money to carry on this transaction?

A. Some of the money which was advanced by Doane—in fact, I guess most of it—came to me through the office of Small & Moore; and I believe, although I do not know—I do not know that it was a fact, but I believe Mr. Small advanced some portion of that money, but I do not know that myself.

Q. Small & Moore were your attorneys?

A. Yes.

Q. And also the attorneys of Chetlain?

A. Yes.

Q. And of Doane?

A. Yes. My answer is meant to be this: I had no agreement with Small to advance me money for any purpose. At that time the only agreement I had for borrowing money was with Mr. Doane and my uncle, S. B. Walker; and if Mr. Small did furnish some

money it was done under some arrangement I knew nothing about
So far as I know my arrangement was not made with him.
280 I believe he did furnish some of the money, but I did not
know it. My uncle advanced me about $15,000 for that and other purposes.

Q. Then this money advanced by Doane and others to you was not all intended by them to be used in the purchase of claims, was it?

A. I do not know what they intended; I know what I meant to do with it.

Q. Did they tell you it was to pay for the purchase of claims?

A. No, sir.

Q. It was, then, a general loan?

A. There was no statement about the intention between me and any one; the agreement wa , I was to have the money up to a certain amount advanced to me, and I was to furnish certain security for those advances.

Q. What security did you furnish?

A. The security was, I agreed to hold all those assignments of those judgments in trust until I repaid this money, and I believe it was Small & Moore that were to be the depository of those claims until such time as the money was repaid; I think that was the agreement; I think that was what I did, or else I put them in a box in the Fidelity Bank.

281 Q. They were practically deposited as collateral?

A. Yes; as a matter of fact I used a great deal more money in buying the claims than Doane advanced me; I was out of money a good while before I got all the claims bought, so far as his advances were concerned.

Q. Have you repaid Doane?

A. I don't owe Doane a dollar in the world.

Q. Were you conversant with the arrangements that were made for this administrator's sale?

A. I guess I was.

Q. Do you know whether any arrangement was made beforehand with the administrator as to how much should be bid on each lot?

A. I don't know whether any such arrangement was made or not, I did not make any such arrangement.

Q. Were you present at the sale?

A. I was.

Q. Do you remember who was present at the sale?

A. Yes, I think I could tell you; the administrator was present, I think Mr. Small was present, and a gentleman named John Gray was present; I think my uncle, S. B. Walker was present;
282 I am not certain about that, and there were two parties from Peru, Illinois, present; I don't recollect the names; they bid on some property; they did not bid enough for it, according to my idea, and I bid and got it, I am sorry to say; Mr. A. B. Jenks was present, and I think Mr. Robert Hale was present.

Q. Do you remember whether there was more than one bid for the property at the corner of Wabash — and Randolph street?

A. I don't remember about that; I am not clear about it.

Cross-examination by Mr. MOORE:

Q. You spoke of these claims in the county court; by that do you refer to the judgments that were entered up in the county court?

A. Yes.

Q. You spoke also of the assignments which were taken to you as trustee; do you mean the assignment of those judgments?

A. Yes.

Q. How do those assignments appear on the records of the property; held in your name as trustee?

A. Yes.

283 Q. Mr. Burry asked you if you were the son of Martin O. Walker, who was the husband of the complainant?

A. Yes.

Q. When did your father marry the complainant—how long before his death?

A. I was not present at the ceremony; I believe it was on the 9th day of May or about that time.

Q. When did he die?

A. He died on the 28th of May.

Q. What year was that?

A. That was in 1874.

Q. Was he in bed at the time he was married?

A. I was not present; I know he was sick and had been confined to his bed for some time previously, and was until he died. I don't know he was out of his bed but once.

Q. How long had she lived in the family?

Objected to as immaterial. Objection sustained.

Mr MOORE: I will offer to prove that the name of the present complainant before she was married was Martha A. Morton, and that she married Martin O. Walker, deceased, when upon his

284 death-bed, and that she lived in the family of Martin O. Walker prior to that time as a domestic for several years.

Mr. Moore proposes to make the witness his own in reference to this inquiry, and the objection is withdrawn.

Q. State what the facts are with reference to your father's marriage to Martha A. Morton; how long had she lived in the family prior to the marriage?

A. Five or six years.

Q. In what capacity?

A. Housekeeper.

Q. What was the physical condition of your father at the time of the marriage?

A. I have already stated I was not present and could not say; before and after the marriage he certainly was a very sick man.

Q. You mean the day before?

A. Yes.

Q. Did you see him the day of the marriage?

A. Yes; in the morning.

Q. Was he a sick man at that time?

A. Yes.

Q. In bed?

A. Yes.

Q. How long had he been in bed?

A. He had been confined to the house most of the time during the winter; he had occasionally been out.

285 Q. What was the condition of this quarter block corner of Randolph — and Wabash Ave. with reference to taxes, tax titles, mechanics' liens, and incumbrances at the time of the administrator's sale, before Mr. Doane had possession of the property?

A. There was a large amount of unpaid takes on the property; there were mechanics' liens upon a portion of it on buildings standing on a portion of it.

Q. What portion?

A. Lot 19, if I remember rightly I think the lots are 16 to 24, in block 9; lot 19; had a building which was under lien of mechanics' claims, and there was also a contingent mortgage on a portion of it.

Q. What was the condition of the estate generally as to mortgages and taxes and tax titles?

A. The estate generally was incumbered; there was very little of it unincumbered, for borrowed money and unpaid taxes and mechanics' liens — upon all of it that was improved, or nearly so.

Q. You say you bid in the homestead property at the administrator's sale?

A. Yes.

Q. In the name of Mr. Doane?

A. I don't remember whether I bid it in in the name of Mr.

286 Doane or not; if I did I ought not to; I ought to have bid it in in my own name.

Q. You also stated you made a quit-claim deed of the homestead property, as well as of the property in question—a quit-claim deed of the homestead property to Doane and quit-claim deeds of the property in question to Rand—is that the fact?

A. I made some quit-claim deeds of the homestead property to Mr. Doane; and I made some quit-claim deeds of this property down here in Fort Dearborn Addition; I think those were made to Rand; the deeds will show.

Q. Did you ever make any effort to sell the property in question—get somebody to take it?

A. I have made a good many efforts to sell the property.

Q. [To] business men and capitalists in the city?

A. Yes.

Q. Mention a few of the names.

A. I tried to sell the property to the Western News Company; I tried to sell it to Mr. Phelps, of Phelps, Dodge & Company; I tried to sell it to a number of individuals, and then I tried to get a syndicate to buy it.

Q. For how long a period did your efforts continue?

287 A. Probably about four years; I made a number of efforts to adjust or arrange for some of the liens on the property with the holders of those liens, both directly and through their attorney, Mr. Goudy.

Q. Did you succeed?

A. I did not succeed in making any adjustment.

Q. Was the property covered with any other buildings at this time except a one or two story building on lot 19?

A. There was a two story brick building on lot 19; I think it was the only building on this property.

Q. Did you ever make any efforts to try to lease this property?

A. No, sir; I have testified to that once before. It would have been a waste of time trying to lease it; could not make a lease.

Q. Do you know whether or not, in addition to the administrator's advertisement, notices were sent out of the sale of this property to various creditors?

A. I don't know; that might have been; I might have known it at the time and forgotten it now; I don't remember it now.

Q. Was there not quite a number of attorneys at the sale
288 representing creditors?

A. I think there were.

Q. Whereabouts was the sale had?

A. The sale was held in the hallway of the then probate court-room, No. 75 and 77 Clark street.

Q. Public sale?

A. Yes.

Q. What was the reason you could not get these various parties you have named to take hold of this property and purchase it?

A. For various reasons, which they assigned; some of the reasons were owing to the confused condition of the incumbrance upon the property; others were stagnation of business at the time and lack of desire to engage in enterprises of the kind in the condition of the real estate market.

Cross-examination by Mr. GOUDY:

Q. What children did your father leave at his death?

A. Myself and a brother, who was a minor at the date of his death, named Edward S. Walker, were the only children.

Q. Did he die testate or intestate?

A. He left a will, the probating of which was refused.

289 Q. It was the administration as of an intestate estate?

A. Yes.

Q. When did Guy H. Cutting die?

A. According to my best recollection about 1867; it was between 1866 and '68, and I think it was 1867.

Q. When you spoke of a contingent mortgage resting on the lots, in block 9, Fort Dearborn Addition, what ones do you refer to?

A. I retracted that statement. I referred to the mortgage made to obtain a release of a judgment against Martin O. Walker in the circuit or superior court of this county and in favor of Tucker, Brown, & Company, of Buffalo, New York.

Q. Then you refer to the deed of trust to Charles E. Brown to secure that judgment?

A. Yes.

Q. What is the frontage and depth of lots 22, 23, and 24, in block 9, Fort Dearborn Addition?

A. The frontage is 68 feet and a fraction, and the depth 169 feet.

Q. What is the frontage and depth of the six lots fronting on Wabash Ave. of said lots numbered 16, 17, 18, 19, 20, and 21?

A. Those lots do not front on Wabash Avenue all the lots
290 front on Randolph street; they have a frontage on Randolph street of about 137½ feet; the depth on Wabash Ave. to the alley at the north end is 169 feet.

Q. In the use of the property have these lots a main frontage on Randolph street or Wabash ave.?

A. They have a main frontage now, as used, on Wabash Ave.

Q. What is the comparative value of those lots last mentioned with the three first mentioned? You may fix it as of 1874 and as of the present time also.

A. The three lots, 22, 23, and 24 I should say were worth about one-fourth as much as the whole of it would be worth.

Q. Would that relative value exist both in 1874 and at the present time?

A. The only difference I can see between 1874 and the present time is that in 1874 those lots would then have had an improvement which was producing an income, and the three lots would have none at all.

Q. Did the three lots—22, 23, and 24—in said block have a prior incumbrance or mortgage made to Brown?

A. Yes.

Q. Who was that to?

A. It was made to the estate of Frederick R. Sears, of Boston, Massachusetts.

Q. Has that been foreclosed?

A. Yes.

291 Q. Were you a party defendant to the foreclosure?

A. Probably; I don't remember.

Q. In what court?

A. There were two suits commenced to foreclose that mortgage, and I believe the one that was prosecuted to a conclusion was in the United States court. I may be mistaken about that.

Q. Prior to the death of your father, and prior to the making of the Brown deed of trust, was there any lien on the east half of the south half of lot 6, block 36, original town Chicago property, located on Randolph street, between State and Dearborn, say prior to the first of April, 1874?

A. Yes.

Q. What was the nature of that lien?

A. It was twofold. There were mechanics' liens, aggregating in the neighborhood of $12,000, and of course this large judgment for $119,000 resting on the whole of the realty.

Q. Was there any enforcement of the mechanics' lien after the death of your father?

A. Yes; I think it was after his death.

292 Q. Who became the owner of the property in those proceedings to enforce the mechanics' lien?

A. Edward A. Small.

Mr. MOORE: You say your brother was a minor at the time of your father's death?

A. Yes.

Q. What age?

A. He was not quite 30 years old.

Q. The bill was filed for the purpose of obtaining dower before he became of age, was it not?

A. I don't remember when the bill was filed; if I did, I could say.

Redirect examination by Mr. BURRY:

Q. You testified that you tried to sell it to two or three different parties; for what did you try to sell it, how much?

A. I tried to get an offer upon it that would come somewhere near what I thought was its value; in asking a price for it I began by asking $100,000, *subject then*. I was laughed to scorn by the first man I went to, and I never asked a price for it afterwards; I stated what I wanted to do and asked them to take hold and help to do it.

293 Q. Did the stagnation in real estate then existing continue on to the present time?

A. No, sir.

Q. When did the property begin to improve?

A. Property first began to improve in this town about August, 1878; the first feeling we had when it began to be better than it had been

Q. Increased considerably since then?

A. The movement that year was very slow; simply amounted to inquiry; before there had been none; but, say, since beginning with about the latter part of August, 1879, to the present time, the advance has been very considerable, according to the property—that is, according to the location of the property; from 25 to 150 per cent.

Q. Considering these nine lots, including the three Sear's lots as a piece of vacant property, do you think that the three lots that were under the Sear's mortgage were worth one-fourth of the whole tract in 1874?

A. I do not think they were quite, as I stated before, but they were worth about that.

294 Q. On what figures would you base that; how much for the whole tract?

A. At that time—in 1874?

Q. Yes. I think if a man had fixed a value of four to five hundred dollars a foot on Randolph street front at that time he would

have fixed probably all that the property could have been sold for, although I thought that the property was worth a great deal more than that. I thought it was worth twice that amount then.

Q. At the time of the administrator's sale in 1878 you think the proportion held good?

A. Yes; I cannot see why it would not from that time to this.

Q. What valuation would you give on the Wabash front of 169 feet of the whole nine lots in October, 1878?

A. I would figure the value of the property at that time on the Randolph street front—because it was then and is now the most valuable front, in my judgment—I should figure it at the rate of $500 a foot as an outside figure on the Randolph street front
295 of 205 feet in '78 if a clear title to the property free and clear of liens. I don't think it could have sold for any more than that then if you had had it in that condition.

Q. Has the property steadily increased in value from that time to now?

A. Yes. I should say at the present time it was worth a great deal more than that.

Q. You are in the real estate business?

A. Yes.

Q. And are one of the defendants in this suit?

A. I don't know whether I am a defendant or not; if I am, I am a nominal one; I have no interest in it.

Q. Did Mr. Walker's health improve any after marriage up to the time of his death?

A. He was out once after that occasion; he may have been out of his room more than once, although I don't know about that; I don't remember.

Q. Did he die of the sickness he had at the time of his marriage?

A. I don't think there was any question about that; his sickness was of longer standing than that.

Q. Was the east half of the south half of lot 6 in block 36,
296 original town, sold at the administrator's sale?

A. Yes.

Q. Do you remember who became the purchaser of it?

A. I don't remember.

Q. Was it either your wife or E. A. Small?

A. It was one of those two.

Q. Mr. E. A. Small was formerly of the law firm of Small & Moore?

A. Yes.

Q. Was that property afterwards quit-claimed by you and your wife to any person if she purchased it?

A. Yes; if she purchased it she has no interest in it now, I know.

Q. Was the consideration for that sale by the administrator and the conveyance from you and your wife, if there was one, part of the money which had been advanced to you through the firm of Small & Moore from Doane or some person else.

A. No, sir; no part of it.

Q. What was the consideration you got?

A. The consideration for that quit-claim deed? There were two considerations; the principal consideration was the annulling
297 or agreement to annul or cancel a certain agreement existing against Samuel O. Walker.

Q. Have you ever received anything for a quit-claim deed of the three lots foreclosed by the Sears estate?

A. I think not. I don't think I ever made a quit-claim deed.

Q. Do you know of any consideration that ever passed to the estate of Martin O. Walker or any other person holding under it from E. A. Small for this part of lot 6, in block 36, except what you have mentioned for the quit-claim deed from you?

A. I can state the transaction if you want me to, and you can draw your own conclusion.

Q. State the transaction.

A. Prior to the sale of that property, No. 79 and 81 Randolph street, by the administrator Mr. Edward A. Small had purchased at my request, in the hope that I might be able to save the property to the estate, and for myself the mechanics' liens upon the property, and when I was unable to repay that advance to Mr. Small, and the estate was also unable to repay it, *but* perfected his claim
298 under the mechanics' liens as assignee of the claim of the original claims. Aside from that I know of no consideration that passed, except, as I say, for the quit-claim deed from Carry Walker to Edward A. Small, the consideration of which was the cancellation, or receipt in full, of certain obligations and written contract against me.

Mr. MOORE. Mrs. Walker received a dower from Nos. 79 and 81 Randolph street; has she a decree for dower?

A. She has a decree for dower against that property.

Q. What was the amount of it?

A. In the neighborhood of $300.

Q. Is it 350?

A. I forget. In one place it was 350 and in another place it was $303. I have forgotten which.

$3.20 witnesses fees paid by complainant.

299–300 Afterwards, to wit, on the sixth day of October, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

MARTHA A. WALKER
vs.
GEORGE C. RAND *et al.* } In Chancery.

Now comes said defendant, George C. Rand, by his solicitor, and moves the court for an appeal to the Supreme Court of the United States from the order entered herein on the eighth day of June last, remanding this cause to the superior court of Cook county, Illinois,

which is allowed upon the filing by said Rand of a good and sufficient bond for that purpose in the sum of one thousand dollars, to be approved by the court; and thereupon said Rand, by his solicitor, presents his bond in appeal, which is hereby approved and ordered to be filed.

301 On the same day, to wit, on the sixth day of October, 1885, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, George C. Rand, Jr., as principal, and William H. Moore, as surety, are held and firmly bound unto Martha A. Walker in the full and just sum of one thousand dollars, to be paid to the said Martha A. Walker, her certain attorney, heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at the June term, 1885, of the circuit court of the United States in and for the northern district of Illinois, in a suit depending in said court between Martha A. Walker, as complainant, and George C. Rand, Jr., John W. Doane, Samuel O. Walker, Edward S. Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker, as defendants, an order or decree was entered against the said George C. Rand, Jr., remanding said suit to the superior court of Cook county,
302 Illinois, from which order or decree remanding said cause said George C. Rand, Jr., has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said George C. Rand, Jr., shall prosecute his said appeal with effect and pay any judgment for costs rendered against him in case his said appeal is dismissed by said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

GEO. C. RAND, JR., [SEAL.]
By WILLIAM H. MOORE, [SEAL.]
His Att'y-in-Fact.
WILLIAM H. MOORE. [SEAL.]

Approved:
W. Q. GRESHAM,
Circuit Judge.

(Endorsed:) Filed October 6th, 1885. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the twelfth day of October, 1885, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

303 *Appeal from Order Remanding Cause to State Court.*

United States Circuit Court, Northern District of Illinois.

MARTHA A. WALKER *v.* GEORGE C. RAND *et al.*

It is stipulated that the clerk may, for the purposes of the above-mentioned appeal, omit, in making a transcript of the record in the above-entitled case, all of the testimony, except the deposition of John W. Doane, with all the exhibits thereto, and of Samuel O. Walker, and it is agreed that such omitted testimony is not necessary for the decision of the motion to remand the case to the State court.

ISHAM & LINCOLN,
Sol'r for Martha A. Walker.
W. C. GOUDY,
For Tucker, Brown & Co. et al.
W. H. & J. H. MOORE,
Sol'rs for Certain Def'ts.

(Endorsed:) Filed Oct. 12, 1885. Wm. H. Bradley, cl'k.

304 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of the proceedings made under the stipulation filed October twelfth, 1885, in said court in the cause wherein Martha A. Walker is the complainant and George C. Rand, John W. Doane, Samuel Otis Walker, Edward Stone Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown, and Henry G. Tucker, &c., *et al.*, are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this fourteenth day of October, 1885.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 1135. George C. Rand, Jr., appellant, *vs.* Martha A. Walker. Filed October 17, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 1135.

GEORGE C. RAND, JUNIOR, *Appellant,*
vs.
MARTHA A. WALKER, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

W. C. GOUDY,
FOR APPELLANT.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 1135.

GEORGE C. RAND, JUNIOR, *Appellant*,
vs.
MARTHA A. WALKER, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

This suit was commenced in the Superior court of Cook county, Illinois, and on the petition of one of the defendants, George C. Rand (Rec., 104), was removed to the United States Circuit court (*Ib.*, 109). A motion was made to remand the cause, which was denied by Judge Drummond, the circuit judge. (*Ib.*, 112.)

The pleadings were completed, evidence taken and the cause submitted to Mr. Justice Harlan for decision on the pleadings and evidence. He being of the opinion that the cause could not be removed under an act of Congress entered an order remanding the case. (Rec., 90.)

From this order Rand appealed to this court. (Rec., 119.)

The only question arises on the order remanding the cause to the State court.

The original bill was filed in the Superior court of Cook county, April 4, 1881, by Martha A. Walker. George C. Rand, John W. Doane, Samuel O. Walker, Edward S. Walker, Augustus L. Chetlain, Charles Fargo, Charles E. Brown, Thomas Brown and Henry G. Tucker, were made defendants.

The bill alleges that the complainant was married to Martin O. Walker, deceased, who during coverture was seized of lots 16, 17, 18, 19, 20 and 21, block 9, Fort Dearborn Addition to Chicago. That he died May 28, 1874, leaving Samuel O. Walker and Edward S. Walker his only heirs at law. (Rec., 2.)

The complainant claims dower in the premises, and alleges a demand on the heirs to set off the same, and a refusal. (*Ib.*)

The complainant alleges that Chetlain was appointed administrator, that the heirs conveyed the premises to Charles Fargo, who refused to assign dower to her.

The bill further alleges that in 1878 the premises were sold at administrator's sale subject to the rights of complainant, and were bid in by George C. Rand, and that the deed conveying the premises to him was made November 2, 1878.

"And your oratrix further shows that in the year A. D. 1878, said premises in which your oratrix claims dower, as aforesaid, were sold at administrator's sale by the said Chetlain, as administrator, as aforesaid, but subject to the

estate and rights of your oratrix in the premises, and at said sale were bid in by one George C. Rand, and said administrator conveyed said premises to said Rand on or about November 2d, A. D. 1878."

"And your oratrix charges, on information and belief, and avers the fact to be, that said Rand, in making said purchase acted in part as the agent and trustee of John W. Doane, and took and held the title to said premises to and for the joint use and benefit of himself and of the said Doane; and your oratrix shows that ever since said last mentioned conveyance said Rand and Doane have entered into and enjoyed the possession of said premises, but that said Doane and Rand, though often requested, have, ever since taking possession of said premises, wholly neglected and refused to set off and apportion to your oratrix her dower therein, by reason whereof said Doane and Rand became, and still are, liable to your oratrix for damages for the detention of her dower in said premises since the second day of November, A. D. 1878."

"And your oratrix further shows that on or about the said second day of November, A. D. 1878, said Fargo conveyed said premises to Carrie Walker, wife of said Samuel O. Walker, and on said last mentioned day, and as a part of the same transaction, said Carrie Walker and Samuel O. Walker conveyed said premises to said Rand, as your oratrix charges in part, in trust for said Doane, and that said Doane and Rand now hold said premises, free from all encumbrances, except the estate of dower of your oratrix therein."

The bill then alleges that at the death of Walker the premises were subject to a lien of a trust deed to Charles E. Brown, in favor of Chauncey Tucker, since deceased,

Henry G. Tucker and Thomas Brown, to secure the payment of a certain judgment against Martin O. Walker, in case that judgment should be affirmed by the Supreme court of the State of Illinois, in which appeal was then pending, also "to secure any other judgment that might "thereafter be rendered against him on the covenants of "the lease, whereon the then existing judgment had "been rendered." A copy of the deed was made an exhibit to the bill.

The bill alleges that the judgment was reversed and the deed of trust ceased to be a lien, and that the deed remained a cloud upon the estate of complainant, which she was entitled to have removed. (Rec., 4 and 5.)

The bill then states that John N. Jewett held, as trustee, the sum of more than $25,000, to be applied upon any liability under said deed of trust. That Chetlain and Samuel O. Walker had some money which should also be applied thereon. (Rec., 5.)

The bill prays that the complainant's dower in the premises may be set off to her, and that an account may be taken of the rents and profits received since the demand for dower, and that a decree may be entered declaring that the deed of trust made by Martin O. Walker to Charles E. Brown, to secure said judgment, has ceased to be a lien on said premises, as against the rights of complainant, and that she is entitled to a release therefrom as to her interest, and that he be required to execute said release, and for other relief. (Rec., 6.)

The defendants, John W. Doane, Charles Fargo, Augustus L. Chetlain, and Samuel O. Walker, were served with summons in Cook county, where the bill was filed. (Rec., 11 and 12.)

An affidavit of complainant was filed, stating that George C. Rand, Edward S. Walker, Charles E. Brown, Thomas Brown, and Henry G. Tucker, resided out of the State of Illinois, that Edward S. Walker resided in the State of Colorado, and the other parties in the State of New York. A notice to the non-residents was published in pursuance of the statute. (Rec., 12 and 13.)

The summons was returnable on the first Monday of May, 1881, and the notice was published April 8, 1881.

May 4, 1881, the appearances of Doane, Chetlain, Fargo and Samuel O. Walker, were entered.

June 6, 1881, the appearance of Charles E. Brown, Thomas Brown and Henry Tucker, was entered. (Rec., 14.)

June 20, 1881, the separate answer of the Browns and Tucker was filed. (Rec., 15.)

August 20, 1881, the demurrers of Rand, Doane, Samuel O. Walker, Edward S. Walker, Chetlain and Fargo, were filed. (Rec., 16.)

December 5, 1881, argument was heard upon the demurrer, and leave given to Rand and Doane to withdraw such demurrer; the demurrer of Fargo was overruled, and the demurrer of the two Walkers was sustained, and leave given to amend the bill within ten days.

December 14, 1881, amendments to the bill were filed by the complainant. (Rec., 20.)

December 17, 1881, on the motion of the plaintiff it was ordered that Rand, Doane and Fargo, plead, demur, or answer to the bill as amended within twenty days.

December 21, 1881, Chetlain and the two Walkers filed a demurrer to the amended bill. (Rec., 23.)

February 1, 1882, argument was heard and the demurrers overruled, and the defendants required to answer the amended bill within one week. (Rec., 26.)

Time was extended, by order of court, to February 13, and on February 10 the Browns and Tucker filed an answer to the amendments to the bill, and also a supplemental answer to the original bill. (Rec., 27.)

In this answer the respondents, by way of supplement, stated that in the suit mentioned in the original answer, the Circuit court of the United States, for the Northern district of Illinois, October 8, 1881, rendered a judgment in favor of Thomas Brown and Henry G. Tucker, against Throop, McClelland and Mullins, survivors of Martin O. Walker and Guy H. Cutting, for $92,171. damages and costs, for the breach of certain covenants in an agreement dated July 15, 1875, between Tucker, Brown & Co. and Martin O. Walker and others, on which the judgment mentioned in the deed of trust set forth in the complainant's bill was rendered.

It is also stated that the judgment for $119,637. rendered by the Circuit court of Cook county was reversed by the Supreme court because of an error by the Circuit court in sustaining a demurrer to certain pleas, and the cause remanded with directions to overrule the demurrer and allow the plaintiffs to reply, and thereafter no further proceedings whatever were had or taken in said suit, but another suit was brought by the said Thomas Brown and Henry G. Tucker, survivors of the firm of Tucker, Brown & Co. (the said Chauncey Tucker having departed this life), against Throop, McClelland and Mullins,

survivors of Walker & Cutting, in the Circuit court of the United States, for the Northern district of Illinois, upon the 1st day of June, 1877, upon said articles of agreement and for a breach of the covenants therein contained. And that in said suit a judgment was rendered October 8, 1881, for $92,171 and costs, and alleges that said judgment is embraced by and secured by a deed of trust by Martin O. Walker and his wife, the complainant, to Charles E. Brown, dated April 15, 1874, which is attached as an exhibit to the original bill. And so the respondents aver that the complainant is not entitled to dower in the premises as against respondent until she has satisfied and paid the judgment rendered by the United States Circuit court. (Rec., 27 and 28.)

On the same day an order was entered giving leave to the defendants to file supplemental answers to the amended bill, and on February 13, 1882, separate answers of Fargo, the Walkers, Chetlain, Rand and Doane were filed. (Rec., 29–38.)

On the same day Rand filed a petition for removal, and therein states that at the time of the commencement of this suit he and his co-defendants, Charles E. Brown, Thomas Brown and Henry G. Tucker were, and still are, citizens and residents of the State of New York.

That the complainant in said cause, at the time of the commencement of this suit was, and still is, a citizen and resident of the State of Illinois.

That said suit was commenced on the 4th day of April, 1881, on the chancery side of said court, by complainant, to recover her dower in the premises mentioned in the bill of complaint filed in said cause.

That the title to said premises at the time of the com-

mencement of said suit was, and now is, in your petitioner alone, subject to the lien of the trust deed, a copy of which is attached to said bill.

That the party for whose benefit said trust deed was given is the defendant, Thomas Brown, above named.

That said cause is still pending and undetermined, and that the amount in controversy therein exceeds, exclusive of costs, the sum of five hundred ($500) dollars.

"Your petitioner states that in said suit there is a controversy which is wholly between citizens of different states, and which can be fully determined as between them, to wit: a controversy between said Martha A. Walker and your petitioner and the said Thomas Brown, Charles E. Brown and Henry G. Tucker. Your petitioner further states that said cause could not have been tried at any term before the present term of this court. Your petitioner therefore desires to remove said cause before the trial thereof into the Circuit court of the United States, for the Northern district of Illinois, at the next term thereof, and for that purpose your petitioner is ready and willing to give sufficient surety, as is by law required to be done in such cases, and hereby offers his bond, with William H. Moore, of Chicago, Illinois, as surety, in the penal sum of five hundred (500) dollars, conditioned as the law directs.

Your petitioner prays that said bond, as offered, may be accepted, and that said suit may be removed into the said Circuit court of the United States, for the Northern district of Illinois, for the next term thereof, pursuant to the act of Congress in such case made and provided, and that no further proceedings be had therein in this court."

On the 20th of February, 1882, the Circuit court of

Cook county ordered that the case be transferred to the Circuit court of the United States. (Rec., 40.)

May 8, 1882, the complainant having moved that the cause be remanded, it was ordered that the motion be denied, by Circuit Judge Drummond. (Rec., 46.)

August 5, 1882, on motion of the complainant she was allowed to file replications to all the answers on file *nunc pro tunc*, as of March 6, 1882, and she was given leave to file a supplemental bill of complaint, and a rule entered that the defendants served should answer the supplemental bill by September, 1882, and a summons was ordered against John N. Jewett, who was made defendant to said supplemental bill. (Rec., 41.)

On the same day the replication was filed and also the supplemental bill. (Rec., 41 and 42.)

The supplemental bill sets forth the pleadings on file and alleges that if any judgment has been recovered by Tucker and Brown against Throop, McClelland and Mullins, as alleged in the supplemental answer, for $92,-171, or for any other sum, that said judgment was obtained fraudulently and by collusion, and to establish, where she had no opportunity to defend herself, a lien upon her estate under the trust deed and in pursuance of a fraudulent agreement between William C. Goudy, attorney for Tucker, Brown & Co., and John N. Jewett, attorney for Throop and McClelland, whereby it was agreed that such judgment should be entered, and before the entry thereof Brown and Tucker should execute to Throop and McClelland a quittance from any such judgment that might be obtained against them, and that Brown and Tucker would not use the judgment against the persons against whom it was entered, but only as against the complainant, Mrs. Walker.

The supplemental bill prays that Jewett may be made a party in addition to the defendants to the original bill, and that said judgment entered by the Circuit court of the Northern district of Illinois, October 8, 1881, may be declared fraudulent in law and of no effect, and the entry thereof to have been obtained by an imposition upon the court, and that the same may be set aside and held to be no bar or cloud upon the dower right of complainant and that such judgment may be held to be no basis for any lien under the trust deed. Repeats the prayer of the original bill. (Rec., 42–48.) August 29, 1882, leave was given Charles E. Brown and Thomas Brown to file a cross-bill by September 15, 1882. Subsequently said cross-bill was filed. (Rec., 49–51.)

The cross-bill makes Mrs. Walker and the defendants to the original bill defendants to the cross-bill. The pleadings are set forth, and it is then alleged that July 15, 1865, a certain lease was executed with covenants on which a judgment was rendered by the Circuit court of Cook county in May, 1873, for $119,637. from which an appeal was prosecuted to the Supreme court of the State of Illinois, where it was pending April 15, 1874. It was also alleged that shortly after the execution of said lease and covenants Martin O. Walker and James Mullins assumed the performance of the covenants in said lease and took exclusive possession of the property therein described, and became entitled to the profits of the business and liable for all losses, and the other lessees ceased from that time to have any interest in the leased premises. That by said agreement Martin O. Walker and James Mullins were equitably liable to pay said judgment rendered as aforesaid April 15, 1874. Martin O. Walker and Martha A. Walker, his wife, the complainant in the

original bill, executed a deed of trust to Charles E. Brown to secure said judgment of which Thomas Brown was then the sole owner, and it was therein provided that in case said judgment should be reversed then the deed of trust was for the payment of any judgment that might be rendered in said suit or any other suit that might thereafter be brought and founded upon the covenants contained in the lease.

It is further alleged that said judgment was reversed by the Supreme court of Illinois in September, 1873, and that the case was then abandoned. It is also averred that June 1, 1877, the said Thomas Brown and Henry G. Tucker, survivors, commenced another suit against Throop, McClelland and Mullins, Walker having departed this life, upon said lease and the covenants therein contained, and that such proceedings were had that a judgment was rendered thereon October 8, 1881, for $92,171. which remained in full force and effect and was secured by the terms and conditions of the said trust deed. And that Thomas Brown was the sole owner of the judgment and entitled to the proceeds.

The cross-bill prays for a decree foreclosing the lien created by the deed of trust and that an account may be taken of the amount due upon the judgment rendered October 8, 1881, and that the premises be sold in default of the payment of said amount. (Rec., 51–6.)

September 30, 1882, Chetlain, the Walkers, Fargo, Rand and Doane filed demurrers to Mrs. Walker's supplemental bill. (Rec., 60–6.)

February 27, 1883, Charles E. Brown, Thomas Brown and Henry G. Tucker filed their answers to the supplemental bill denying that the judgment was obtained by

or through collusion, and insisting that it was a lien. (Rec., 66.)

March 1, 1883, the complainant, Mrs. Walker, confessed the demurrers filed to her supplemental bill, and leave was given to amend, which was then done. (Rec., 68.)

March 2, 1883, Mrs. Walker filed her answer to the cross-bill of Thomas Brown, in which she admitted the making of the lease and covenants, the rendering of the judgment by the Circuit court of Cook county and its reversal, but denying the existence or validity of the judgment of the United States Circuit court of October 8, 1881. (Rec., 69.)

On the same day the replication of Mrs. Walker to Brown's answer was filed.

On the same day Rand, Doane, Chetlain and the Walkers filed their answers to the amended supplemental bill. (Rec., 72.)

March 5, 1883, Mr. Jewett filed his answer. (Rec., 75.)

On the same day Mrs. Walker filed her replication to the answer of Rand, Doane, Charles Fargo, the Walkers and Jewett. (Rec., 85.)

March 10, 1883, a default was entered against Rand and others for failure to answer the cross-bill of Brown. (Rec., 86.)

April 5, 1883, Brown filed a replication to the answer of Mrs. Walker to the cross-bill. (*Ib.*)

April 6, 1883, the case was referred to a master in chancery to take proofs and report the same with his findings to the court. (*Ib.*, 87.)

January 25, 1884, Mrs. Walker asked leave to amend

her answer to the cross-bill of Brown, which was reserved until the final hearing. (*Ib.*, 89.)

May 23, 1884, the case was argued upon the pleadings and proof before Mr. Justice Harlan, which was continued for the two subsequent days and taken under advisement. (*Ib.*, 89.)

A part of the testimony only is included in this record in pursuance of the agreement of the solicitors (Rec., 121), it being agreed that only a part included in the record is material for the examination and determination of the question of jurisdiction.

The deposition of John W. Doane and Samuel O. Walker, two of the witnesses, are incorporated in this record.

It appeared that Martin O. Walker died in May, 1874, leaving Martha A. Walker, his widow, and two sons, Samuel O. Walker and Edward S. Walker. The estate is largely insolvent, debts allowed in the Probate court amounting to nearly two hundred thousand dollars. The real estate owned by him was incumbered by taxes, tax sales, mechanic liens and mortgages.

Most if not all of the claims against the estate were purchased by Samuel O. Walker. He received the money from Doane, S. B. Walker, an uncle, and advanced some himself to purchase these claims. They were assigned, some of them to one person, and some to another. The object in purchasing these claims was either to receive money thereon, or to obtain an advantage in purchasing in portions of the real estate.

Rand and Doane were partners in business in New York, Doane being engaged in business in Chicago in which Rand was not interested.

A sale was made by the administrator, at which Samuel O. Walker bid off some of the property, Doane other portions of the property, and the property now in question was bid off by Rand for $5,000; the property was worth $70,000 or $80,000, but the purchase was made for a comparatively small amount, probably because of the ownership of the claims by the parties bidding.

The administrator conveyed to Rand, and subsequently the heirs made quit-claim deeds. The legal title was thus vested in Rand.

It appears from Doane's testimony that he had an interest in the purchase from the administrator at the time the sale was made, by reason of the ownership of these claims, and some arrangement with Rand, the exact purport of which does not appear.

Doane testifies that he has been in possession of the property since the administrator's sale and that he was virtually the owner of these lots, but it does not appear that Rand was not beneficially interested therein; on the contrary, the inference is that he was to some extent.

November 7, 1881, about a month after the judgment was rendered in favor of Tucker and Brown by the United States Circuit court for $92,171. an agreement was made between Brown and Doane with reference to that judgment. (Rec., 97–106.)

By this agreement Brown was to foreclose the mortgage and obtain a decree. Doane was to bid off this property for $20,000, and to pay that sum to transfer the dower right. When Brown should receive the bonds and securities in Jewett's hands for the sum of $20,000 and $8,000, if Doane elected to purchase the three Sears lots secured by the Brown mortgage, the judgment se-

cured by the mortgage was to be entered satisfied and not be enforced against any other property described in the mortgage, and if the foreclosure proceedings were not completed in five years then the judgment was not to be a lien on any property except the Sears lots. (Rec., 106.)

The only error assigned is, that the Circuit court erred in entering an order remanding the cause to the State court.

There are three grounds on which it is contended that jurisdiction existed in the United States Circuit court.

First. There was a controversy which is wholly between citizens of different states, and which can be fully determined as between them, to wit: a controversy between Martha A. Walker with reference to her dower on the one side, and on the other George C. Rand, Charles E. Brown, Thomas Brown and Henry G. Tucker, Mrs. Walker being a citizen of the State of Illinois, and the others citizens of New York.

Second. There was a controversy which is wholly between citizens of different states and which can be fully determined as between them, to wit: a controversy between Mrs. Walker on the one side, and Charles E. Brown, Thomas Brown and Henry G. Tucker on the other, with reference to the lien of the mortgage in favor of Thomas Brown.

Third. There is a federal question, to wit: the validity of the judgment of the Circuit court of the United States, rendered October 8, 1881, for $92,171. in favor of Thomas Brown and Henry G. Tucker, against Throop and McClelland, which is secured by the mortgage made by Martin O. Walker and his wife to Charles E. Brown as trustee.

Questions of Law.

I.

THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION OF THE CONTROVERSY IN REGARD TO DOWER, THAT BEING A CONTROVERSY BETWEEN CITIZENS OF DIFFERENT STATES.

The persons interested as defendants as to the claim for dower were Charles E. Brown, who held the legal title by virtue of the deed of trust made to him by Martin O. Walker and Martha A. Walker, the complainant in the original bill, and George C. Rand, who held the title to the equity of redemption, subject to the Brown trust deed.

It will be conceded that Fargo, Chetlain and the Walker heirs were not material parties to this main question of Mrs. Walker's right to an assignment of dower; that could be established without the presence of either of these persons. If she succeeded in maintaining that right, they were proper parties to recover damages from for detention, but they were not necessary parties to obtain a decision of the question as to whether she was entitled to dower.

As to Doane he was not an indispensable party for the decision of that question.

The bill alleges that Rand purchased and held the title *partly for himself and partly for Doane.*

The extent and nature of Doane's interest is not fully disclosed, but whatever it was he was represented by Rand in such a way that any decree rendered would be binding upon Doane.

What Doane means by being "virtually the owner," as he says at one time, it is difficult to say. Whatever his interest may be it is very certain that he is represented as to the title by Rand, and any decree that might be rendered, with Rand as a party, with the absence of Doane, would include and bind Doane.

There is nothing in the testimony to show that Doane had any other or different interest than was alleged in the original bill, "that Rand held the title to said premises to and for the joint use and benefit for himself and said Doane."

Charles E. Brown was a necessary party in determining the right of dower, as well as Rand, because he held the legal title by virtue of his trust deed.

Mrs. Walker, by the original bill, alleged certain facts, by which she claims a right of dower, which is an estate for life in one-third of the property. Suit was commenced against the persons having the title in fee, Brown and Rand.

If her dower should be established, as against them, it would be set off by metes and bounds, according to the provisions of the statute, or its annual value would be determined. If the owners of the title in fee defeated the claim, that would be the end of the suit; if, on the other hand, she established it, commissioners would be appointed to set off a portion of the land by metes and bounds, if susceptible of a division; if not, a report would be made, and the annual value determined. If this result

was reached, then, and then only, would it be material to have the other persons made defendants in the suit. Their interest was incidental or subsidiary, dependent upon the main question as to the existence of the dower right.

If the court had jurisdiction, as between the main parties, with reference to the ownership of the parties who had an incidental interest, the court would have jurisdiction.

In Barber on Parties, page 532, it is said:

"Where the complainant claims in opposition to a deed of trust or assignment as being fraudulent and void, he may proceed against the assignee or trustee, who is the holder of the legal estate in the property, without joining the *cestui que trust*."

Again, on page 533, he says:

"Persons having demands prior to the creation of a trust may enforce those demands against the trustees without bringing before the court the persons interested under the trust, if the absolute disposition of the property is vested in the trustees."

The following decided cases are illustrative of the principles laid down by Barber in the above sections.

In *Corcoran* v. *Canal Co.*, 94 U. S., 745, it is said:

"It is also argued that in that suit Corcoran was only a party in his representative capacity of trustee for the bondholders, and he here sues in his individual character as owner of some of the bonds, and in this latter capacity is not bound by that decree. But why is he not bound? It was his duty as trustee to represent and protect the holders of these bonds; for that reason he was made a party, and he faithfully discharged that duty. It would

be a new and dangerous doctrine in the equity practice to hold that the *cestui que trust* is not bound by the decree against his trustee in the very matter of the trust for which he is appointed. If Corcoran owned any of these bonds and coupons, then, he is bound, because he was representing himself. If he has bought them since, he is bound as privy to the person who was represented. *Kerrison* v. *Stewart*, 93 U. S., 155, and the authorities there collected."

In *Kerrison, assignee*, v. *Stewart*, 93 U. S., 155, it was *held:*

Where a trustee is invested with such powers, and subjected to such obligations that his beneficiaries are bound by what is done against him or by him, they are not necessary parties to a suit against him by a stranger, to defeat the trust in whole or in part. In such case, he is in court on their behalf; and they, though not parties, are concluded by the decree, unless it is impeached for fraud or collusion between him and the adverse party.

In this case the trustee was a trustee under a deed of trust for benefit of creditors, and the question was whether the creditors were necessary parties.

The opinion discusses the question at great length.

New Jersey Franklinite Co. v. *Oakes Ames*, 1 Beasly (N. J.), 507:

The New Jersey Franklinite Company executed to the respondent a mortgage, to foreclose which a bill was filed in the court of chancery. A second mortgage had been executed by the company to certain persons, as trustees, to secure the payment of bonds thereafter to be issued by the corporation.

The trustees were parties defendants in this suit. A decree having been made in the court below to foreclose the mortgage, this appeal was taken, and on the cause being moved for argument, an application was made to introduce certain persons as defendants, who claimed to be *cestui que trusts* under the said second mortgage.

It was *held:* That the *cestui que trusts* of a mortgagee are not necessary parties to a bill of foreclosure, whether such mortgage constitutes a prior or subsequent encumbrance, or whether the mortgagee be complainant or defendant.

Similar decisions:

Millink v. *Morris Canal, &c., Co.*, 3 Green's Ch., 377.
Vanechten v. *Perry*, 2 Johns. Ch. R., 197.
Shaw v. *R. R. Co.*, 5 Gray, 162.
Campbell v. *R. R. Co.*, 1 Wood, 368.

Loomis v. *Cline*, 4 Barb., 453:

Where promissory notes are given to a person for the purpose of compounding a felony alleged to have been committed upon his daughter, and the maker subsequently files a bill against the father to have the notes delivered up and canceled, on the ground of their having been given upon an illegal consideration, the daughter is not a necessary party.

Said the court:

"And the only material question in the case is whether Patty Ann Cline was and is a necessary party. The general rule is that all persons concerned in the demand, or who may be affected by the relief prayed for, ought to

to the bid in by [illegible] to make a deed of my [illegible]

be parties, if within the jurisdiction of the court. The aim is to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and to prevent further litigation. The general rule is that a *cestui que trust*, as well as the trustee, must be a party; but *one* of the exceptions is that when the complainant claims in opposition to the assignment or deed of trust, and seeks to set it aside on the ground that it is fraudulent and void, he is at liberty to proceed against the fraudulent assignee or trustee who is the holder of the legal estate in the property without joining the *cestui que trust*. Nothing was left undone on the part of the zealous and faithful trustee which could have been done for or by her as a party. I think she had not acquired any legal interest in the notes."

Johnson v. *Candage*, 31 Maine, 28. *Held*:

Where an assignment of real estate has been made for the benefit of creditors, it is not requisite in a bill in equity against the assignee relative to the property assigned, that the creditors should be made parties. The assignee is supposed to represent and protect their interest.

Winslow v. *Minn. & P. A. R. R. Co.*, 4 Minn., 315.

In this case *Banning* made application to become a party defendant.

He was a holder of one of the bonds of the railroad company, secured by mortgage to trustees.

After stating various exceptions to the rule requiring all persons interested to be made parties defendant to a suit, the court said:

"And the principle seems well-settled, that in an action by a creditor to reach trust property, in the hands of administrators or trustees, who have control of and whose duty it is to protect the property, the *cestui que trusts* need not be joined as parties. The defense of the trustees is their defense, and their presence in court is not necessary to the protection of their interests."

In *Rogers* v. *Rogers*, 3 Paige Ch., 378, it was held:

Where the complainant claims in opposition to a deed of trust, and seeks to set it aside on the ground of fraud, he may proceed against the fraudulent trustee alone without making the *cestuis que trust parties*. It is otherwise where the complainant is endeavoring to enforce a claim adverse to the interests of the *cestuis que trust*, but which was founded upon the supposed validity of the trust deed.

The court said:

"Lord Redesdale lays it down as a principle of equity pleading, that persons having demands prior to the creation of the trust, and not claiming under the same, may enforce their claims against the trustee without bringing the persons interested in the trust before the court. (Mitf. Eq. Pl., 4 Lond. Ed., 175.) Although there are some exceptions to the rule, thus laid down by this distinguished equity pleader, the case now under consideration does not come within the principles upon which those exceptions to the rule have been mentioned."

In *Beal* v. *Bennett*, 5 Ga., 301,

It was *held:* Where a bill is filed by an executor for the purpose of executing the trusts declared by the will, the *cestui que trusts* need not be made parties.

to the bill in by ... Mr. Doane to make a deed of ... [illegible]

In *Corner* v. *Stevenson*, 3 Jones Eq., 95,

It was *held:* A bill by a creditor against a trustee, to subject the resulting trust arising after the *cestuis que trust* named in the deed of trust are satisfied, need not make such *cestuis que trust* parties.

If there is any evidence to show that Rand paid any part, the smallest, of the consideration, he would then be a tenant in common with Doane, and the following case would be authority:

Terminal Co. v. *Lowenberg*, 18 Fed. R., 339.

Held: In an action against two or more persons to appropriate property held by them as tenants in common to the use of a railway corporation, there is a separable controversy between such corporation and each of said tenants, which can be fully determined as between them, and if either of such tenants is a citizen of a different state from such corporation he may remove the whole case into the Circuit court.

Held, also, following *Osgood* v. *Chi., D. & V. Ry. Co.*, 6 Bissell, 335, the case having been brought to the United States court, the question upon the motion to remand is not whether there are any irregularities in the proceedings for removal, but whether, on the face of the record, it satisfactorily appears that the action does not involve a controversy within the jurisdiction of this court?

Goldsmith v. *Gilleland*, 24 Fed. Rep., 154.

Held: Where a number of persons claim undivided interests in real property adversely to one in possession of the same, the latter may maintain a suit to quiet his title against any or all of such claims; and neither of said per-

sons or adverse claimants is a necessary party to a suit for that purpose against the other.

Ruckman v. *Ruckman*, 1 Fed. Rep., 587.

Held: In a suit in equity to determine the ownership of a bond and mortgage; the mortgagor is not a necessary party defendant, and, therefore, the suit may be removed, where all the other defendants join in the petition for removal.

II.

THE CONTROVERSY AS TO THE EXISTENCE OF A VALID LIEN IN FAVOR OF BROWN.

As the pleadings were completed and evidence taken, this controversy was more serious than the one in regard to the dower. It appeared without dispute from the pleadings that Martin O. Walker was the owner of the lots described in the original bill subject to the deed of trust to Charles E. Brown during his marriage with the complainant in the original bill.

This entitled her to dower as against the heirs, and the only remaining question was as to the validity of the incumbrance in favor of Brown. This mortgage was not set up as an absolute bar to the right of dower, but as an incumbrance superior to the dower right, because Mrs. Walker signed the deed of trust with her husband. The original bill set forth the deed of trust to Charles E. Brown, and alleged that it had ceased to be a lien upon the property. The trustee and the *cestui que trust* were made parties to that bill, so that it became a material question presented by the original bill as to whether there was a valid incumbrance or not. The answer of Tucker

and the Browns denied the allegation of the original bill, and alleged that the mortgage was a valid lien, and set forth a suit then pending on the covenants in the lease in which a judgment was sought to be recovered, and if recovered would be secured by the mortgage.

Subsequently a supplemental answer was filed showing that the suit had been prosecuted to a final judgment, and that the court had entered judgment October 8, 1881, for $92,171. and it was insisted that the right of dower would not be allowed except subject to this incumbrance. At a later day Mrs. Walker, the original complainant, filed a supplement to her bill alleging that the judgment was obtained through fraud and collusion, and asking that it be set aside.

The parties to the controversy as to the validity of this incumbrance, were Mrs. Walker on the one side, Charles E. Brown, Thomas Brown and Henry G. Tucker on the other. No other persons had any intesest in that controversy which would require them to be made parties to the suit to determine that question. Mrs. Walker was a citizen of Illinois, and the two Browns and Tucker were citizens of New York, and therefore the Circuit court of the United States had jurisdiction of that controversy.

It is immaterial what ground the case was removed upon. If it is disclosed in the subsequent stages of the case that there is a controversy between citizens of different states which can be wholly determined in the federal court, then the case will not be remanded. It is suggested by counsel for complainant that Rand and Doane were both indispensable parties for the determination of this controversy. That cannot be true. Both Rand and Doane, whatever interest the latter may have, are indifferent to

this question. If Mrs. Walker succeeds as against Brown and defeats this incumbrance, then they, as the owners of the equity, must respond for the full value of Mrs. Walker's dower. If she fails, and Brown establishes the incumbrance, then they are liable to Brown instead of Mrs. Walker, to the extent of that incumbrance. They are indifferent parties, the interest being balanced, and therefore are not on either side of the controversy. All that can be deduced from the pleadings and position of the parties in this record is, that Rand and Doane do not deny the existence of the incumbrance. Mrs. Walker does.

III.

A FEDERAL QUESTION IS INVOLVED BY REASON OF WHICH JURISDICTION WILL BE SUSTAINED.

A supplement was filed to the original bill by Mrs. Walker, seeking to vacate or set aside the judgment at law rendered by the United States circuit court. Thomas Brown filed a cross-bill in which he asked to foreclose the mortgage, alleging that it secured this judgment at law. So a controversy arose as to the validity of the judgment and the question as to whether it should be vacated or set aside. This jurisdiction existed irrespective of the citizenship of the parties, and rests upon obvious and well known principles. In fact all of the preceding controversies may be said to be included in this. It involved the main dispute in the case. The other questions were merely incidental. As the citizenship of the parties is immaterial as to the jurisdiction on this matter, and this question is presented by the last pleadings made after the removal of the case, and the evidence is taken thereon, a decree will necessarily

dispose of this question. No other court than the Circuit court of the United States, which rendered this judgment, has jurisdiction to vacate it or set it aside.

Suppose this case should be remanded to the State court. It would be within the power of that court to determine the right of dower, the damage for detention, the existence of an incumbrance in favor of Brown, and the amount if anything due to him, but it would not be possible for that court to annul, vacate, or set aside or arrest by injunction or otherwise the judgment of the Federal court. If the United States court renders a decree that judgment may be enjoined or set aside by the decree, as it is the only way in which Mrs. Walker can obtain that relief.

As before stated there is no dispute as to the right of Mrs. Walker to dower except so far as obstructed by the deed of trust to Charles E. Brown. That deed is no obstruction unless there is a valid judgment which will be enforced by the United States Circuit court which rendered it, and which is covered or secured by the deed of trust, so that it may be stated that the right to relief in this case depends wholly upon whether or not this judgment can be disturbed. As no court can decide that question except the United States court which rendered it, that is a federal question which alone confers jurisdiction upon the United States Circuit court. It is immaterial what the ground of removal was; if it appears that there is a controversy between citizens of different states, the case will be retained precisely as it would be in case the controversy was disclosed by the original pleadings.

This position has been sustained by this court.

In *Krippendof* v. *Hyde*, 110 U. S., 276, it was *held*:

A bill filed on the equity side of the United States court to restrain or regulate judgments or suits at law in the same court, can be maintained without reference to the citizenship or residence of the parties.

The opinion of the court, as published in the report, to which reference is made, contains a full discussion of this question.

Freeman v. *Howe*, 24 How., 450.

In this case the marshal, by virtue of *mesne* process issuing out of the Circuit court of the United States for Massachusetts, attached certain railroad cars, which were afterwards taken out of his hands by the sheriff of Middlesex county under a replevin brought by the mortgagees of the railroad company.

It was *held*:

1. This proceeding on part of sheriff was entirely irregular.

2. Whether the railroad cars were or were not the property of the railroad company was a question for the United States court, which had issued the process, to determine.

3. The proper proceeding for the mortgagees was to file a bill on the equity side of the court from which the process of attachment issued, which bill would have been within the jurisdiction of the court, although all the parties were citizens of Massachusetts.

Bank v. *Turnbull & Co.*, 16 Wall., 190.

In this case the bank recovered a judgment against Abijah Thomas for $4,700 and interest. A *fi. fa.* was

levied upon certain personal property. Turnbull & Co. claimed the property as theirs.

To prevent sale Turnbull & Co. gave the sheriff an indemnifying and forthcoming bond. Turnbull & Co. then applied to the Circuit court of Alexandria county, Virginia (the court which rendered judgment as above), for leave to intervene, and to order an issue to try the property. The prayer of the petition was granted, and an order made to try the issue, and that Turnbull & Co. should be considered as plaintiffs in the proceeding.

Turnbull & Co. thereupon applied for removal to the United States court, alleging they were citizens of Maryland and New York. After the removal the United States court found for Turnbull & Co. and rendered judgment in their favor. A writ of error was sued out from the Supreme court of the United States, which held that the United States court had no jurisdiction, because it was an auxiliary and incidental suit to the one in which judgment was recovered; and the question could only rightly be decided by the court which gave the judgment in the original case.

Minnesota Co. v. *St. Paul Co.*, 2 Wall., 609:

In this case certain railroad mortgages had been foreclosed in the United States court in Wisconsin, at the suit of citizens of New York, and certain decrees entered and sales made.

This was a bill filed by the Minnesota Company, a citizen of Wisconsin, against the St. Paul Company, also a citizen of Wisconsin, complaining of the decrees in the former case, and to have a construction of the same.

The Supreme court of the United States held the

United States court had jurisdiction irrespective of citizenship, and that the question was "not whether the bill filed is supplemental, or original, in the technical sense of equity pleading; but whether it is to be considered as supplemental, or entirely new and original, in that sense which the Supreme court has sanctioned with reference to the line that divides jurisdiction of Federal courts from that of State courts."

See also

Dunn v. *Clarke*, 8 Peters, 1.
Randall v. *Howard*, 2 Black, 585.

In *Seymour* v. *Construction Co.*, 7 Biss., 460, it was *held:*

That the United States Circuit court has jurisdiction of a suit upon a supersedeas bond given in that court, independent of the citizenship of the parties.

State courts cannot attack or collaterally review decisions of the United States courts made in the matters of which they have the acknowledged jurisdiction.

Semple v. *Hagan*, 27 Cal., 163.
Gillet v. *Powell*, Spears (S. C.) Ch. 142.
Pigot v. *Davis*, 3 Hawks., 25.

IV.

THE APPLICATION TO REMOVE WAS MADE IN PROPER TIME.

It may be contended by counsel, as it was in the court below, that the application to remove was not presented in time. I refer to the following authorities on that question:

Miller v. *Tobin*, 18 Fed. Rep., 609:

Held, a hearing on a demurrer to a complaint, and an order overruling the same and allowing the defendant to answer to the merits of the case, is not a "trial" within the meaning of that term as used in section 3 of the act of 1875, but such trial, whether it be an issue of fact or law, is one upon which a final disposition of the case is made.

The first term at which the case can be tried is the term at which there is an issue for trial.

Meyer v. *Construction Co.*, 100 U. S., 474.
Scott v. *Clinton, etc., Co.*, 6 Biss., 529.
Gurnee v. *Brunswick*, 1 Hughes, 270.
Green v. *Kingler*, 10 Cent. Law J., 47.
Van Allen v. *Railroad Co.*, 3 Fed. R., 545.

A case is in a condition to be tried when it is at issue, but a case is not at issue when the answer requires a reply to be filed till such reply is filed.

Mich. Cent. R. Co. v. *Ins. Co.*, 9 Chi. Leg. News, 34.

So if the case was at issue, and could have been tried, but was continued over the term by consent of the parties, it is then too late.

Scott v. *Clinton, etc., Co.*, 6 Biss., 529.
Stough v. *Hatch*, 16 Blatchf., 233.

In *Blackwell* v. *Braun*, 1 Fed. Rep., 351, it was

Held, the words "at the term at which said cause could be first tried," contained in the act of March 3, 1875, mean the first term at which the pleadings were in condition for trial; that is to say, when the issues were made up.

The case of the *Pullman Palace Car Company* v. *Speck*, 113 U. S., 84, is the last case decided by this court upon this question, and it may be claimed that the case now before the court comes within the rules laid down in that case.

It does not appear from this record, as it did in that by a stipulation, that there was a term of the court beginning on the first Monday of every month, and that there was an extension, by agreement of the parties, of the time to answer the original bill and also the cross-bill. Nor does it appear from this record, what the rules of court were in reference to the time to anwser and the time for trial.

Suppose, by way of argument, which supposition is according to the facts outside of the record, that there was a rule of the court which provided that a case should not be tried until the issues were completed and the case placed by order of the court, after notice being given to the parties upon a trial calendar. Then very clearly this case could not have been tried before application was made to remove.

In the absence of a positive rule of the court the presumption should be indulged in that the court was proceeding according to its rule, and that the case had not reached a term at which it could be tried, and such court, in passing upon the question of removal, ordered a change.

When the motion to remand was made no facts as to these points were presented to the court.

It appears from the record that the pleadings were not completed when the case was removed. The real issues were formed in the United States court. There was certainly nothing presented by the pleadings as they stood

when the order of removal was entered which formed an issue for trial; nor was there anything to show that the parties were delinquent, according to the rules and practice of the court in forming these issues. When the case was removed the last of the answers were filed on the same day the petition was presented, and subsequently in the United States court a supplement was filed to the original bill, a supplemental answer was interposed and a cross-bill was filed. There is nothing in this record to show this case could have been tried at any term of the State court prior to the presentation of the petition.

In the absence of an affirmative showing of that question the order of removal ought to be sustained.

W. C. Goudy,
For Appellant.

Supreme Court U. S.
FILED
MAR 1 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 1135.

GEORGE C. RAND, *Appellant,*
vs.
MARTHA A. WALKER, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLEE.

ISHAM & LINCOLN,
SOLICITORS FOR APPELLEE.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLEE.

The ground of the removal of this case was an alleged separable controversy between the complainant below, Martha A. Walker, and one of the defendants, George C. Rand. A motion to remand was made immediately after the removal of the cause, but upon argument was overruled by Judge Drummond, in the then state of the record. The motion was afterwards renewed upon the suggestion of the court, acting upon a rule that it is the duty of the court to dismiss a suit when, at any stage in the proceedings, it appears that the suit does not really and substantially involve a controversy within the

jurisdiction of the court, or that the parties to the suit have been improperly or collusively made or joined for the purpose of creating a case cognizable by the court. *Williams* v. *Nottaway*, 104 U. S., 209. It will be serviceable to consider the relations of the several defendants to each other; first, as they pretended them to be; and second, as they actually were when developed in testimony. The original bill was filed for dower in the Superior court of Cook county, April 4, 1881. A number of defendants were made, who are mentioned on page 2 of appellant's brief, but George C. Rand, a citizen of New York; John W. Doane, a citizen of Illinois; Charles E. Brown, Thomas Brown, and Henry G. Tucker, citizens of New York, are the only ones whose consideration is important to the present issue. The complainant is a citizen and resident of Illinois.

The bill prays an assignment of dower to the complainant, and an account of rents and profits received since her demand for dower. It also prays a decree declaring that a deed of trust which had formerly been executed to Charles E. Brown had ceased to be a lien on the premises as against the complainant, and for other relief. Rand and Doane were defendants because, at a sale of the premises, by the administrator of Martin O. Walker, the complainant's husband, they had become purchasers of the property, subject to the dower right, and subject to any lien that might exist under the deed of trust. The title at that sale was taken in the name of Rand who was, in New York, a business partner of Doane. It was understood that the title was taken in Rand, wholly or in part for the use of Doane.

Charles E. Brown was the trustee under the deed of trust above mentioned, and Thomas Brown and Henry G.

Tucker were the beneficiaries thereunder, and these persons were made defendants for that reason. The history of that trust deed is material and may be brief. In 1874 a judgment had been recovered in the state Circuit court against Martin O. Walker, and his former partners, Mullins, Throop and Cutting, for about $119,000. Walker and others appealed from that judgment, and in May, 1874, an appeal was pending in the Supreme court of the United States. This judgment had been recovered in a suit upon the covenants in a lease of certain coal lands in Ohio, leased for the purpose of mining coal. These covenants were to work the mines to their full capacity and to pay certain royalties reserved by the lease for the coal taken out. The working of the mines was abandoned and lessees claimed they were exhausted. The action was in *covenant upon those covenants*, and to the declaration in that action in covenant certain pleas were filed by the defendants. One was a plea of eviction from a portion of the premises; another was a plea of unlawful detention of a portion of the premises. Demurrers to these pleas were sustained, and on the appeal in the Supreme court the error relied on for reversal was the refusal of the Circuit court to *sustain these pleas to the action on the covenants*. The whole matter is shown in *Walker et al.* v. *Tucker et al.*, 70 Ill., 527. It is considered that the ruling of the court in that case is to the effect that upon those pleas there can be no recovery *upon the covenants of that lease*.

This issue was pending in the Supreme court of Illinois when the trust deed in question was executed. Meanwhile the judgment was a lien on all of Walker's real estate, of which the amount was very large, and embarrassed him in effecting a loan, which he was seek-

ing to make upon a mortgage, and he made an arrangement with Brown, who had succeeded to the ownership of the Tucker, Brown & Co. judgment, whereby this trust deed was given, in order to transfer and concentrate the lien of that judgment upon the property in question here, and upon a few other parcels, and to set free the remainder of Walker's realty from the lien of the judgment. Subsequently the judgment being reversed by the Supreme court, the lien of the trust deed perished altogether, except in the contingency involved in the following clauses in the deed of trust which are shown on page 56 of the printed record, to wit:

"In trust, nevertheless, to secure to said Thomas Brown, or to whomsoever may be the owner of said judgment, and entitled in equity to the benefit of the aforesaid lien thereof, the payment of any execution that may be issued on said judgment, with the costs, as aforesaid, in case the same shall be affirmed in the Supreme court, to which the same *is now appealed;* and in case the same shall be reversed or not affirmed, then, for the payment of any judgment that may be thereafter ultimately *rendered in said suit*, or ultimately rendered in any *other suit that* may be thereafter brought and *founded upon the covenants contained in the indenture of demise set forth in the pleadings in said suit*, and *upon which covenants the said suit* or action is founded. And it is hereby covenanted and agreed that the said judgment, if affirmed as aforesaid, or any other judgment that may, *as above mentioned, be recovered upon the covenants aforesaid*, shall be and remain a first and valid lien upon the above granted lands and premises which are hereby conveyed."

The terms of this mortgage were carefully framed to express the actual intention of the parties. They were framed in reliance upon the sufficiency of the pleas which had been filed, and in view of the exact issue then pending in the Supreme court on appeal. *The reliance was on those pleas.* That judgment having been reversed, the

mortgage stands as security for no other judgment except another recovered, *as that had been, in an action on the covenants* of the lease. No other *can satisfy the condition* upon which it is again to become operative; and under the ruling of the Supreme court of the state no such judgment can be had.

We insist that only such a judgment is available under the deed of trust; that the decision of the Supreme court is directly to the effect that *no cause of action exists upon the covenants in that lease*, and establishes the position that the lien of this deed of trust can never be revived. This illustrates the kind of judgment necessary to ever make the deed of trust operative again. It equally shows that such a judgment could never be obtained except by consent or by artifice; for the usual pleas would inevitably bar it, as the condition of the deed of trust could not be modified, and a judgment was impossible if opportunity was given to defend. It seemed apparent that the mortgage was, in legal effect, extinguished, and this was the basis of the prayer of the bill of complaint for a decree declaring that it had ceased to be a lien on said premises as against the complainant.

Suddenly an unanticipated judgment appeared on the records of the Federal court. On the first of June, 1877, Tucker, Brown & Co. had filed in this court a præcipe, *in assumpsit*, laying damages at $200,000 against Throop, McClelland and Mullins, as surviving partners in the old mining firm. Walker and Cutting were dead. Summons was issued and served upon Throop and McClelland, and then this suit, like the others in this court that preceded it, seemed to be abandoned. Statute required the declaration to be filed ten days before the second term thereafter, or the suit could be dismissed, but term after term

passed, and no declaration was filed. No declaration appeared till January 15, 1879, when a declaration *in covenant* was put into the case, and then it slept again without any further action. The answer of Brown and others, filed in this dower case on the twentieth of June, 1881, contained an averment which gave the first notice that such a suit was pending. In the meantime, Mullins was not served, and never has been served. And the cause slept on, till all at once, after more than four years, on the eighth of October, 1881, the declaration having been amended to the form of a declaration *in assumpsit*, a plea of general issue was filed, a jury was waived, the statement was made to the court, "that by consent of the parties, a "judgment then was to be taken"; and a judgment was accordingly entered.

Subsequently it appeared in testimony that this judgment was entered by the consent of the defendants, their release and exoneration from the effect of the judgment having been given them in advance. Thereupon, Brown and the other mortgagees filed a supplemental answer in this case, averring that Throop and McClelland had appeared and had pleaded to the declaration, that upon a trial of the issue a judgment had been rendered, that this judgment was secured by the terms of the mortgage, and that complainant was not entitled to dower as against the mortgagees, until she had satisfied in part this judgment. She thereupon filed a supplemental bill (this cause being then pending in the Federal court), in which she prayed, among other things, that this judgment might be found to be fraudulent in law and in fact, and its entry to have been obtained by an imposition upon the court, and that it might be set aside; but the supplemental bill also prayed expressly that the judgment might "*be held to be*

"*no basis for any lien through or by said trust deed on "said dower interest.*"

It is obvious that this judgment was not entered for any purpose connected with the defendants against whom it professed to be recovered, for it was entered upon their consent, obtained by releasing them in advance; and it is denied that the estate of a deceased partner can be charged by the admissions of a surviving partner, or by a judgment entered by their consent or connivance, *Sturges* v. *Beach et al., executors of Norton*, 1 Conn., 507; *Thompson* v. *Bowman*, 6 Wallace, 316; *Hall* v. *Lanning*, 91 U. S., 169, and *Christy* v. *Tancred*, 9 M. & W., *442; nor is such a judgment in any sense within the fair meaning of the terms of the deed of trust. By the judgment there referred to is meant a judicial ascertainment of a liability at law on the covenants of the lease, in a proceeding against parties to be affected by the lien of the trust deed, not against persons having nothing whatever to do with the lien and released in advance from the effect of the judgment.

Nevertheless the said Thomas Brown thereupon filed a cross-bill (Rec., p. 51), based upon this judgment, and praying a foreclosure of the deed of trust for his own benefit. Subsequently was developed in testimony the existence of a private agreement between Thomas Brown and Doane, shown in the record at page 106, bearing date the very day of the entry of the collusive judgment, showing that Doane had bought of Brown his interest in that deed of trust, with an agreement that it should be used for the benefit of Doane to cut out the dower of the widow, the complainant, but in the name and ostensibly for the benefit of Brown; and the consideration passing to Brown by which the benefit of this contract was thus secured to Doane at

the sacrifice of the doweress, was the payment to Brown of money and bonds which were in the hands of Mr. Jewett, belonging to the estate of Mr. Walker and other moneys belonging to the same estate, derived from the Sears lots, in which Mr. Doane had no interest and to which he had no claim of right. The contract was made in duplicate and the following is the copy signed by Brown:

EXHIBIT A.

"Memorandum agreement between Thomas Brown and John W. Doane, October 8, 1881.

"Thomas Brown *is to* foreclose a deed of trust made by Martin O. Walker and wife to Charles E. Brown, on certain lots at the corner of Wabash avenue and Randolph street, in the city of Chicago, to secure a judgment therein mentioned, and which *has been rendered* by the Circuit court of the United States for the Northern district of Illinois, *this day*, against Amos G. Throop and Robert McClelland, and *to obtain a decree against Mrs. Walker to sell the property*, said proceeding, however, *to be conducted at the expense of said Doane.*

"2. *John W. Doane is to bid off the lots* described in said deed, *the title of which is now in George C. Rand, for* twenty thousand dollars, or *to pay that sum for a transfer of the dower right to the owner in fee*, and discharge the same of record.

"3. *If Brown fails to procure said decree and sale*, or to purchase the right of dower and transfer the same and discharge the same of record to the owner in fee, so that the owner is required to purchase the dower and discharge the same of record, or so that the dower shall be assigned or assessed, *then Brown is to pay towards the dower five thousand dollars* ($5,000) and Doane is to pay or meet the balance.

"4. In case a sale is made under such decree of foreclosure of those lots known as the Sears lots, on Randolph street, and the equity of redemption is purchased by Brown, he is to transfer it to Doane for $8,000, at the

option of said Doane to take the same or not, or Doane may purchase said lots at said sale for that sum without hindrance from Brown.

"5. When Brown receives the bonds or securities or funds now held by John N. Jewett (*which he shall receive on the delivery of this agreement*), and the said sum of *twenty thousand* dollars, and the said sum of *eight thousand* dollars, at the option of said Doane as to the eight thousand dollars, *the judgment* against McClelland and Throop IS TO BE ENTERED SATISFIED, and it is not to be enforced against any other property described in said deed of trust.

"6. *Said suit for foreclosure is to be commenced and prosecuted by Brown with diligence, and proceedings completed within five years, and, if not concluded by that time, he is to be considered to have failed* as aforesaid, and, *shall, at the end of that time,* CANCEL AND DISCHARGE OF RECORD THE JUDGMENT in the United States Circuit court, Northern district of Illinois, in favor of Brown and against McClelland *et al.*, and the *same shall be no longer a lien against any of the property mentioned in said deed of trust, except the Sears property.*

"7. *On the signing of this* memorandum John N. Jewett *is to deliver the funds or bonds in his custody* (except $1,000 for Mullins) *to said Brown,* with the exception of $5,000, which he is to retain and hold as *security for the payment of the $5,000 herein mentioned, if Brown shall be required to pay the same.* This is to be binding upon the heirs, administrators and assigns of both parties hereto.

"THOMAS BROWN.

"I hereby ratify the above contract, and agree to carry out its terms without any expense to said Doane.

"CHICAGO, November 7, 1881.

"THOMAS BROWN,
"By W. C. GOUDY,
"*His Attorney.*"

This contract was privately made, and was intended to remain concealed. The cross-bill of Brown was filed in September, 1882. The whole structure of this cross-bill, which Doane allowed to be taken as confessed, negatived

positively the existence of such a contract as that. It declared that the judgment for $92,171 remained in full force, and asserted that Brown was the sole owner of it.

The money in the hands of Jewett, and the Sears moneys also, could be applied upon indebtedness of Walker only when such indebtedness was legally ascertained against his estate, and it could not be so legally ascertained by a judgment entered against surviving partners by their consent. Moreover, Doane had purchased at the administrator's sale subject to whatever lien might exist under this deed of trust. He could not use moneys of the estate to discharge this lien, if any existed; on the contrary, he would be bound to indemnify the estate if such moneys were so applied. The result is that the relations with the parties were as follows. On the face of the proceedings appeared a controversy between the complainant, Mrs. Walker, and Charles E. Brown, holding title to the lands in question under the deed of trust and his beneficiaries, Thomas Brown and Tucker, as to the validity of the deed of trust; second, a controversy between complainant, Mrs. Walker, and Rand, holding the title to the equity of redemption, which he had purchased at the administrator's sale, and Doane, who was understood to be interested with him in that purchase. Rand, and he only, removed the cause to the Federal court. Actually, however, the relations of the parties, as developed by the testimony, were these: Rand had no interest whatever in the purchase at the administrator's sale; the purchase was in the interest of Doane, and the consideration was paid by him in advance in the purchase of claims against the estate.

Rand has no beneficial interest, but holds as a naked trustee for Doane, and under our statute of uses, therefore, the

legal title, as well as the use, has been in Doane since November, 1878. *Lynch* v. *Swayne*, 83 Ill., 336; *Witham* v. *Brooner*, 63 Ill., 344; *Kellogg* v. *Hale*, 108 Ill., 168.

It appears in the record that at the administrator's sale the title was taken in Rand to prevent Tucker, Brown & Co., who then held the interest under the deed of trust adversely to Doane, from getting him out of the State court where the Supreme court had already passed upon the mortgage question, as above stated. In the record, page in the testimony of Mr. Doane, on his cross-examination, is the following:

"Title to this property was taken in Rand's name, *because suggested by Small & Moore.* I don't remember why *except that he was a resident of the same state as Tucker, Brown & Co.* He has *no money interest in the property*, but might be called a legal owner."

Taking title in a party *having residence in the same state* with Tucker, Brown & Co. could have been suggested by attorneys with reference to but one consideration. The only matter concerning which residence in the same state would have any significance is the jurisdiction of the Federal court under the statutes relating to removal of causes. No subtlety or equivocation can weaken the force of this obvious fact. Afterwards, when under the secret agreement above set forth, Doane considered that he had succeeded to the place of Tucker, Brown & Co., it was as important for him as he before had felt it to be for Brown, to escape from the State court in which the case of *Walker* v. *Tucker*, 70 Ill., 527, had been decided.

It was to avoid the controlling effect of that decision in the State courts, that Doane's attorney, in the name of Rand, removed this case to this court, after Doane, under his contract, considered that he had succeeded to the

position of Brown. He speculated upon this change of courts, for he took his title in the name of Rand, when his interest was different, to prevent Brown from getting him out of the State court.

Conclusive moral evidence that this statement is true is everywhere in the body of the record, arising from the situation and the actual conduct of the parties. The adaptation of an act to the producing of a particular result, and its actual use by the parties to produce that result, give rise to a cogent implication that the act was originally intended for the purpose to which it was adapted and applied.

In fact, therefore, in the real relation of the parties, there was no controversy in the cause upon any subject at the time of the removal except between the complainant and Doane. Doane had succeeded to the title of the heirs by the administrator's sale, and it was against him, and him only, that dower was being enforced. By the secret agreement Doane had also succeeded to whatever interest had real existence under the deed of trust, and it was covertly being enforced for his benefit. Under these conditions there was no controversy at all properly within the jurisdiction of the Federal court; and the parties to the suit have been improperly and collusively made and joined for the purpose of creating a case colorably removable under the act of Congress. We proceed now to the consideration of the propositions advanced by Mr. Goudy on page 15 of his brief filed in this court upon this question of removal.

I.

It is claimed there was a controversy wholly between citizens of different states, and determinable as between them, to wit: a controversy between Martha A. Walker, in reference to her dower, a citizen of Illinois, on the one side, and on the other, George C. Rand, Charles E. Brown, Thomas Brown and Henry G. Tucker, citizens of New York. From this arrangement of parties to the controversy Mr. Doane is omitted altogether. The argument of counsel clings to the straw that the court may think it not absolutely proven that Rand is wholly without interest in this matter, and that Doane is the only party in interest. The averment of the bill is brought forward that Rand held title partly for himself and partly for Doane, but the truth is that developments in the evidence disclosed this to have been a mistake of the complainant. Doane swears in one place that Rand "*has no money* "interest in the property," and in another that he, Doane, is "virtually the owner," and the counsel suggests (page 17) that what he means by that, "it is difficult to say." It was not difficult for him to find out when his client was upon the stand, (for under the contract between Doane and Brown, Doane is his client). He says that "there is noth- "ing in the testimony" to show that Doane had any other interest than was alleged in the original bill, that Rand held the title for the joint use and benefit of himself and Doane, and he says, on page 23, that "if there was any "evidence to show that Rand paid any part, the smallest "of the consideration, he would then be a tenant in com- "mon with Doane." But for these suggestions there was no justification in the record. We reprint, in a note below,

statements of Mr. Doane taken from pages 91, 92 and 94 of the printed record.* It is perfectly clear that the sole owner of the property was Mr. Doane, as between him and Rand, and that the title was passed to Rand for the

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* Q. Do you have any interest in the title to that land?
A. Not legally, I suppose, but I do really.
Q. You own the land, do you?
A. Yes, sir; virtually.
Q. When did you first become interested in this land; at the time of the administrator's sale?
A. Yes, sir.
Q. Who paid for the lot at the time it was sold by the administrators?
A. Those lots were paid for virtually before the sale.
Q. How long before?
A. At different times before. The claims against the estate were purchased from time to time.
Q. Do you know by whom they were purchased?
A. I furnished the money.
Q. They were practically all purchased up?
A. Practically all; I think every one.
Q. That was before the sale?
A. That was before the sale.
Q. To whom did you hand the money to buy up these claims?
A. I handed the money to Small and Moore.
Q. For whom?
A. For myself.
Q. To whom was the money to be given?
A. It was to be used in the purchase of those claims against the estate.
Q. For whose use or for whose benefit were those claims to be so purchased?
A. For the perfection of the title.
Q. You remember how much that property was sold for at the administrator's sale, do you not?
A. I think it was sold at the time.
Q. $5,000, was it not?
A. A nominal sum.
Q. Why did it go for a mere nominal sum?
A. If I understood it, it was of no consequence what it did sell for; if it sold for a large sum it would come to the parties that owned the claims.
Q. That is, it was all arranged beforehand?
A. You can call it what you have a mind to.
Q. How did it happen you agreed to advance the money to buy out claims against the bankrupt estate where you were not sure you would get the property at the sale?
A. I think I was pretty sure of getting the property or the value at the sale which would be ample to repay the dividend that had been advanced.
Q. In other words, you advanced so much money to clear up the claims, and you were going to get the property to pay it back?
A. Yes, sir.

special purpose we have stated. The material issue in this case is as to the extent to which complainant is entitled to dower in this property, and whether subject or not to any superior claim under the deed of trust. In this question of dower Doane is solely interested, not Rand at all. There is a great accumulation of authorities in the brief of counsel to show that Rand, as a trustee for Doane, sufficiently represents him, so that Doane is not a necessary party. This suit was begun in the State court, and by the decisions of the Supreme court of Illinois Doane was absolutely a necessary party. *Chicago & Great Western Land Co.* v. *Peck*, 112 Ill., 408; *McGraw* v. *Bayard*, 96 Ill., 146. Particularly was he a necessary party in view of the fact that the complainant knew, outside of the record, and had notice that Doane was the real owner of the property; but whether a necessary party or not, the complainant had the right to make him a party if by so doing she might have a more effective decree. So it was expressly considered by the Circuit Justice, and the complainant, if entitled to an assignment of dower, is entitled to a decree in a proceeding where all future controversy in the case, as between her and Doane, may be concluded. The Circuit Justice said: "Doane is therefore a proper party to be "sued and, I think, a necessary party, as the complainant "knows that he is the real owner of the property." *Louisville & Nashville Railroad Co.* v. *Ide*, 114 U. S., 52. Mr. Doane, therefore, is inevitably involved in the controversy between the parties as they are arranged in the statement of the counsel above set forth.

II.

It is claimed that there was a controversy wholly between citizens of different states and determinable as between them; namely, a controversy between Mrs. Walker, on the one side, and Charles E. Brown, Thomas Brown and Tucker, on the other, with reference to the lien of the mortgage in favor of Thomas Brown. In this arrangement of the parties to this controversy both Rand and Doane are omitted altogether.

As to this claim, it is to be observed that none of the parties connected with the deed of trust joined in the proceeding for removal or ever sought to remove the cause, nor is there any foundation for the refuge which is sought by counsel in the proposition (page 25) that, whatever the original ground of removal may have been, if there can be found anywhere in the cause a controversy between citizens of different states, wholly determinable in the federal court, the cause will not be remanded. However the case might have been if the relations of the parties had been actually what they pretended them to be to the court, their actual relations, as disclosed in the testimony excluded the counsel from any refuge there. Under the contract between Doane and Brown, Doane became the party in interest under the deed of trust. That was his actual relation before the order for removal was made or the petition for removal filed. This relation, concealed from the court at the time, has been since disclosed, so that Doane was inextricably involved in the controversy created by the bill of complainant to have the deed of trust held extinguished as to her. He was so involved before the removal and has continued so to the present time.

Counsel says (page 26): "All that can be deduced from "the pleadings and position of the parties in this record is "that Rand and Doane *do not deny the existence of the en-* "*cumbrance.*" There is far more than this. Doane does not deny it because he thinks he owns it, and by his contract with Brown it is to be covertly enforced and used to sacrifice the dower of the widow in his interest. Mr. Doane cannot be eliminated from this controversy, and would be a necessary party to it if it were the only one in the case.

III.

It is said there was a federal question, namely, one concerning the validity of the judgment entered in the Circuit court of the United States, October 8, 1881, for $92,171. The proposition is that this being a judgment of the federal court it cannot be reviewed or set aside in the state court, to which that question would be remitted if the case were remanded.

We have already recited in part the proceedings by which this judgment was obtained. It is a judgment against Throop and McClelland recovered by their consent; that consent being secured by releasing them in advance from the operation of the judgment.

It is sufficient to say that no such issue need arise as that suggested by counsel. It is wholly unnecessary that the judgment should be set aside. It is true that the supplemental bill, filed as it was in the federal court, prays that that judgment may be held for naught. It is quite immaterial what is done with that judgment, for the real and substantial question involved is *whether it is secured by the deed of trust.* The only question in which the

complainant, Mrs. Walker, is concerned, is whether the terms of the deed of trust make the amount of that judgment a lien on the lands in which she has her dower. This is not a federal question; any court may construe the terms of that deed of trust with reference to this judgment. The judgment itself may stand for aught that she cares, and may be enforced or not against Throop and McClelland. She is not a party defendant nor has the amount of the claim been established against the estate of her husband. The only question in which she is interested is *the construction of the terms of the deed of trust*, and of this any court of chancery will have jurisdiction which may have jurisdiction of the parties. And such is the specific prayer of her bill, to which the attention of the court has already been drawn. The prayer of that supplemental bill is "that any such judgment may be held to "be no basis for a lien through or by said trust deed or "said dower interest, and that there may be granted unto "your oratrix all the relief prayed in or by her original bill "of complaint." (Rec., p. 47.)

IV.

It was urged below, and the objection is insisted upon here, that the application to remove was not presented in time, and this question is argued at length in the brief of counsel. The bill in this case was filed on the 4th of April, 1881. The record, page 39, shows that the bond accompanying the petition for removal is dated the 7th day of February, 1882, and on page 40 it appears that the order for removal was made on the 20th day of February, 1882. We consider that this question is now disposed of

by the late case of *Pullman's Palace Car Co.* v. *Speck*, 113 U. S., 84. That case was removed to the federal court from the same Superior court of Cook county. The conditions that applied in the one case apply exactly in the other. That case was begun at the September term, 1883, and the petition for removal was filed on the 21st of February, 1884, at the February term of that court. In *Lamar* v. *Micou*, 114 U. S., 223, it is held that "the law "of any state of the Union, whether depending upon "statutes or upon judicial opinions, is a matter of which "the courts of the United States are bound to take judi- "cial notice, without plea or proof."

The statute of the State of Illinois providing the terms of the courts of Cook county, and among them of the Superior court of Cook county, is found in the Revised Statutes of Illinois, Chap. 37, title "Courts," section 77, and is as follows: "*Be it enacted by the People of the* "*State of Illinois, represented in the General Assembly*, "that the terms of the Circuit court of Cook county shall "commence on the third Monday of every month. That "the terms of the Superior court of Cook county shall "commence on the first Monday of every month. That "the terms of the Criminal court of Cook county shall "commence on the first Monday of every month." It follows, therefore, the bill being filed on the fourth day of April, which was the first day of that April term, that nine successive terms of the court intervened between the term of the filing of the bill by the complainant against Rand, and the term at which it was removed by him to the Federal court. It is manifest that in the regular course of procedure the cause might have been tried at some term prior to its removal.

EDWARD S. ISHAM,
Solicitor for Appellee.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 1135.

GEORGE C. RAND, JUNIOR, *Appellant,*
vs.
MARTHA A. WALKER, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY FOR APPELLANT.

W. C. GOUDY,
ATTORNEY FOR APPELLANT.

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REPLY FOR APPELLANT.

The only question for decision in this case is as to the citizenship of the parties, and the controversy arising between them on which depends the right of removal.

The counsel for appellee has entered upon the merits of the controversy to a limited extent, and as usual in such cases, the facts are not fully or correctly stated to the court.

I do not intend to reply to any propositions except such as relate to the right of removal.

The agreement or memorandum between Brown and Doane, and signed by Doane, is printed on pages 8 and

9 of the brief for appellee, and it is insisted that the effect of this memorandum was to transfer Brown's interest to Doane. The paper bears no such construction.

It is also stated that the agreement was entered upon the same day of the judgment. That is not true. At the head of the paper is October 8, 1881, which was the day of the judgment, and it was referred to as being rendered on that day, but at the end of the agreement is November 7, 1881, a month later.

Doane testifies that the agreement was entered into November 7, 1881, about a month after the judgment. (Rec., 105.) He also testifies that he had no information that said judgment was to be rendered before it was entered, and that he applied to Mr. Jewett to take some steps to set it aside. This resulted in a conversation with the attorneys for Brown, and eventually the agreement was made. (Rec., 96.)

The suit was commenced in June, 1877, and was pending until October 8, 1881, when the case was tried and judgment entered in favor of the plaintiffs for $92,171.

There is nothing in the agreement which can be construed as a satisfaction or discharge of that judgment, nor of an assignment thereof to Doane. Brown agreed to foreclose the deed of trust which secured the judgment, and when he obtained the decree, to sell the property. Doane agreed to bid off the lots held by Rand for $20,000, and to pay that sum for the transfer of the dower right to Rand, the owner in fee. So far the agreement appears to be that Doane was desirous of having the claim for dower extinguished, and in order to accomplish that he was willing to pay $20,000. If the sale was ef-

fected under the decree of foreclosure the result desired by Doane would be accomplished, but if there was any failure in that specific way, and Brown could obtain a transfer of the dower right in any way, Doane agreed to pay the same amount of money.

For the purpose of making it of interest to Brown to proceed with his foreclosure, a provision was then made that if Brown failed he should contribute $5,000 towards the amount that might be required to be paid for the dower, and this was secured by the last paragraph of the memorandum, leaving funds in the hands of Jewett to the amount of $5,000 as security.

It appears by the memorandum and also the evidence in this case, that the deed of trust covered more lots than those held by Rand called the Sears lots, which would also be included in the decree of foreclosure. It further appears by the memorandum that Jewett had in his hands bonds and securities, the amount of which is not stated. The memorandum in reference to the Sears lots gives Doane the option to purchase under the foreclosure decree for $8,000, so far as Brown could give him that right, and it also provides that Brown should receive the bonds and securities and funds then held by Jewett. The memorandum then provides that when Brown should have the bonds and securities from Jewett, the $20,000 from Doane and the $8,000 from the Sears lots, the decree should not be enforced against any other property described in the deed of trust. Reference to the deed itself will show that it included other lots and land than the lots held by Rand and those named as the Sears lots. As to this property, Brown agreed not to enforce his deed of trust.

By the sixth paragraph of the memorandum Brown agreed to commence and prosecute a suit to foreclose with diligence and complete the proceedings within five years, and in case he failed to do so he was then to cancel and discharge the judgment, and it was to be no longer a lien against any of the property except the Sears lots. The object of this provision was obviously to enforce the prompt fulfillment of the agreement on Brown's part. The intent was not to satisfy t. . judgment without the receipt of the amount for which it was rendered.

The memorandum contemplated that Brown should receive at least $28,000 in money besides the bonds, securities and funds held by Jewett and finally it was agreed that the entire amount would be obtained from these sources.

It is a strange idea that this agreement furnishes any evidence that Brown had sold out his interest to Doane or that Doane had become the sole party making the contest against Mrs. Walker as to her dower. Brown had his judgment, and was endeavoring to collect it. Doane was threatening some proceeding to have the same set aside, and a stipulation was made contemplating the full satisfaction of the judgment.

The interest of Doane in the property and matters in controversy was not enlarged by this agreement or changed so far as it could affect the question of the jurisdiction of the United States court. What effect may be given this contract in the hearing upon the merits is not now before the court.

Counsel for the appellee assert that the only question is as to the lien of the trust deed upon the property, and

that such question had been conclusively decided against the lien by the Supreme court of Illinois.

On page 4 of appellee's brief, the material part of the condition of the deed of trust is quoted, and it will be seen that it was given to secure a judgment then in existence, from which an appeal was then pending in the Supreme court of the state, and it was contemplated by the parties that such judgment might be reversed, so a provision was made that the deed of trust should secure any judgment which might be ultimately obtained in any other suit which might thereafter be brought and founded upon the covenants in the lease set forth in the pleadings in the record then pending in the Supreme court. The judgment was reversed, not upon any question of fact or merits, but because the court below had sustained demurrers to certain special pleas. In the opinion of the court these pleas were good, and therefore the judgment was reversed and the case remanded, with the right to the plaintiff to reply to the pleas. The mere fact that averments were made in the pleas was not evidence of their truth. Issue might be taken thereon when the defendant would be required to establish the truth of the pleas by evidence, but the case was never redocketed and no further proceedings had therein. A new suit was commenced in the United States Circuit court, which held the law as to the sufficiency of these pleas different from the Supreme court of the state. The United States court was not bound by the decision of the State court as to to these questions of law, and there is nothing whatever to indicate that the pleas stated the truth. The plaintiff prosecuted his new suit to final judgment, and it was founded upon the covenants contained in the lease described in the pleadings in the former suit, and the judgment therefore came within the terms of the deed